Central Law Journal.

ST. LOUIS, MO., JANUARY 27, 1899.

The United States District Court for the Eastern District of Wisconsin has recently, in the case of *In re* Bruss-Ritter Co., decided a question of some perplexity as to the time of the taking effect of the new bankruptcy law, the court holding that the intention of the act, to have force and effect from the date of its passage, is expressly declared in the concluding paragraphs, and that with the purpose of congress thus established to have the law take effect from July 1st, the proviso to postpone the filing of petitions thereunder in voluntary cases one month, and involuntary cases four months, cannot operate to nullify that purpose for a reasonable preparatory time so directed for commencing the proceedings, and that while it is probably true that the authority granted to congress by the constitution to establish uniform laws on the subject of bankruptcy cannot be exercised by the mere abolishing or suspension of State insolvency provisions without furnishing a system of remedies in their place, yet such system is provided by this act, and the fact that petitions may not be received before the time fixed is a mere regulation of procedure, the time and manner of commencing actions being always subject to regulation, and in no sense can it be held that the remedies of suitors which are presumably adequate and complete, are thereby impaired.

The reading of the Bible in public schools as a supplementary text book of reading where the teacher is not allowed to make comments and where the reading takes place at the close of school sessions from which any pupil may be excused, on application of parents, has been declared by the Supreme Court of Michigan in Pfeiffer v. Board of Education, not a violation of any of the provisions of the Michigan constitution. This view is in harmony with the leading adjudicated cases on the subject. The question came before the Supreme Court of Maine as early as 1854. Donahue v. Richards, 38 Me. 398. Though the provisions of the constitution of that State differed substantially from that of other States, the reasoning and conclusion of the Maine court is of argumentative value. The common schools, they say, are not for the purpose of instruction in the theological doctrines of any religion or of any sect. The State regards no one sect as superior to any other, and no theological views as peculiarly entitled to precedence. It is no part of the duty of the instructor to give theological instruction, and, if the peculiar tenet of any particular sect were so taught, it would furnish a well-grounded cause of complaint on the part of those who entertained different or opposite religious sentiments. But the instruction here given is not in fact, and is not alleged to have been, in articles of faith. No theological doctrines were taught. The creed of no sect was affirmed or denied. The truth or falsehood of the book in which the scholars are required to read was not asserted. No interference, by way of instruction, with the views of the scholars, whether derived from parental or sacerdotal authority, is shown. The Bible was used merely as a book in which instruction in reading was given. But reading the Bible is no more an interference with religious belief than would reading the mythology of Greece or Rome be regarded as interfering with religious belief or affirming the Pagan creeds. A chapter in the Koran might be read, yet it would not be an affirmation of the truth of Mohammedanism, or an interference with religious faith. The Bible was used merely as a reading book, and for the information contained in it, as the Koran might be, and not for religious instruction. If suitable for that, it was suitable for the purpose for which it was selected. No one was required to believe, or punished for disbelief, either in its inspiration or want of inspiration, in the fidelity of the translation or its inaccuracy, or in any set of doctrines deducible or not deducible therefrom. A similar view was entertained by the Supreme Court of Iowa in Moore v. Monroe, 64 Iowa, 367. In treating of the effect of the provision in the several State constitutions corresponding to that under discussion, Judge Cooley, in the work above cited (Constitutional Limitations), says, at page 470: "The American constitutions contain no provisions which prohibit the authorities from such solemn recognition of a Superintending Providence in public transactions and enterprises

as the religious sentiment of mankind inspires, and as seems meet and proper in finite beings. Whatever may be the shade of religious belief, all must acknowledge the importance of recognizing in important human affairs the superintending care and control of the great Governor of the Universe, and of acknowledging with thanksgiving His boundless favors, or bending in contrition when visited with the penalties of His broken laws. No principle of constitutional law is violated when thanksgiving or fast days are appointed, when chaplains are designated for the army and navy, when legislative sessions are opened with prayer or the reading of the Scriptures, or when religious teaching is encouraged by the general exemption of the houses of religious worship from taxation for the support of the government."

NOTES OF IMPORTANT DECISIONS.

ASSOCIATION — EXCHANGES — EXPULSION OF MEMBERS—BY LAWS—VALIDITY.—The Supreme Court of Illinois decides, in Greene v. Board of Trade, 51 N. E. Rep. 599, that a rule of the Chicago Board of Trade, providing that when any member commits any grave offense, or act of dishonesty involving the association, the board of directors shall appoint a committee from their number to make a preliminary investigation as to whether charges should be preferred to the board, is not unreasonable and against public policy; that when a committee of the board of directors of the Chicago Board of Trade makes a preliminary investigation of charges against a member of the Board of Trade, to determine whether a trial of such charges shall be had, the member is not entitled to notice of such preliminary investigation; that the fact that charges against a member of the Chicago Board of Trade are preferred by a member of the board of directors which is to try the member upon such charge is no ground for enjoining such trial; that a rule of the Chicago Board of Trade that a member being tried before the board of directors for violation of the by-laws of the board shall not be allowed to be represented by professional counsel is not unreasonable or against public policy; that the fact that a member of the Chicago Board of Trade by virtue of his membership has made contracts between customers does not prevent the board from expelling such member for violation of its rules, as such contracts can be enforced by the customers in their own names; and that customers dealing with a member of the Chicago Board of Trade are conclusively presumed to have dealt with him with reference to the rules of the board, which provide that members can be expelled for misconduct.

ANIMALS—HUMANE SOCIETY—KILLING ANIMALS.—In Goodwin v. Toucy, 41 Atl. Rep. 806, decided by the Supreme Court of Errors of Connecticut, it was held that section 3670 of the General Statutes of Connecticut, providing that an agent of the humane society may destroy any animal "in his charge" when, in his judgment and that of two reputable citizens, such animal appears to be "injured, disabled, diseased past recovery, or unfit for any useful purpose," does not authorize him to take an animal properly hitched on a street, and kill it, however bad its condition may be, it not being abandoned or cruelly treated or having any contagious disease; but, to authorize the killing under such conditions, the agent must have taken it, and the owner, neglected to retake it after a reasonable time therefor, under section 3667, providing, when any person arrested for cruelty to animals is at the time in charge of a vehicle drawn by an animal cruelly treated, an agent of the socieiy may take charge of it, and shall give notice to the owner, and care for it till the owner take charge of it, provided he shall take charge of it within sixty days, and there shall be a lien on it for such care; or, under section 3668, authorizing such agent to take charge of any animal found abandoned, neglected, or cruelly treated, requiring him to give notice to the owner, and permitting him to provide for it till the owner take charge of it, and declaring the expenses of such care a charge against the owner.

BILLS AND NOTES—NEGOTIABLE INSTRUMENT—PURCHASERS FOR VALUE—STOLEN PROPERTY.—It is held by the Court of Chancery Appeals of Tennessee, in Whiteside v. First National Bank, 47 S. W. Rep. 1108, that purchaser, for value, before maturity, and in due course of trade, of negotiable paper indorsed by the payee in blank, from one who has stolen it, acquires a title good even against the owner; that negotiable paper, taken without notice, before maturity, as collateral security for a loan made at the time, is held by the taker as an innocent holder; that where stolen negotiable paper was transferred to an innocent holder as collateral security, the court will not, for the purpose of defeating his title, presume that the loan secured by it was usurious, even where the lender testified that he did not remember the rate of interest, and that where one whose reputation in the community was good, who had theretofore held a responsible public office, negotiated paper of one who was a surety on his official bond, and with whose sons he shared the same office, the fact that such person was insolvent and indebted to the transferee bank, of which the other transferee was president, and wherein the borrower's paper had been protested, was not sufficient to put the transferees on inquiry as to his title.

CONTRACTS—SATISFACTORY PORTRAIT — RETENTION OF POSSESSION.—In a recent issue of this journal, we published an interesting article by Mr. John D. Lawson, on what constitutes performance of a contract, wherein the promisor agrees to perform to the satisfaction of the promisee—46 Cent. L. J. 360. A very recent decision by the Supreme Court of Rhode Island, involves a question of that character—Pennington v. Howland. It was there held that an artist who agrees to paint a "satisfactory" portrait, has no cause of action for the price unless the buyer himself is satisfied, whether or not the portrait is reasonably satisfactory. The court says: "When the subject of the contract is one which involves personal taste or feeling, an agreement that it shall be satisfactory to the buyer necessarily makes him the sole judge whether it answers that condition. He cannot be required to take it because other people might be satisfied with it, for that is not what he agreed to do. Personal tastes differ widely, and, if one has agreed to submit his work to such a test, he must abide by the result. A large number of witnesses might be brought to testify that the work was satisfactory to them, that they considered it perfect, and that they could see no reasonable ground for objecting to it. But that would not be the test of the contract, nor should a jury be allowed to say in such a case that a defendant must pay because, by the preponderance of evidence, he ought to have been satisfied with the work, or, in other words, that it was 'reasonably satisfactory.'

"Upon this principle numerous cases have been decided. In McCarren v. McNulty, 7 Gray, 139 (an action to recover the price of a bookcase), the court said: 'It may be that the plaintiff was injudicious or indiscreet in undertaking to labor and furnish material for a compensation the payment of which was made dependent upon a contingency so hazardous or doubtful as the approval or satisfaction of a party particularly in interest. But of that he was the sole judge. Against the consequences resulting from his own bargain, the law can afford him no relief. Having voluntarily assumed the obligations and risk of the contract, his legal rights are to be ascertained and determined solely according to its provisions.' Gibson v. Cranage, 39 Mich. 49, was to the same effect, where the subject of the action was a portrait. In Zaleski v. Clark, 44 Conn. 218, the plaintiff was to make a bust of the defendant's deceased husband satisfactory to her. The court held that it was for her alone to determine whether it was so, and that it was not enough to show that her dissatisfaction was unreasonable. Brown v. Foster, 113 Mass. 136, was for a suit of clothes. Devens, J., said: 'It is not for any one else to decide whether a refusal to accept is or is not reasonable, when the contract permits the defendant to decide himself whether the articles furnished are to his satisfaction.' The doctrine was carried to very great length in Singerly v. Thayer, 108 Pa. St. 291, 2 Atl. Rep. 230, where an elevator had been erected in a building, and 'warranted satisfactory in every respect.' It was held that, if it had been substantially completed so that the owner of the building could understand how it would operate, it could be rejected if it was not satisfactory. In Boiler Co. v. Garden, 101 N. Y. 387, 4 N. E. Rep. 749, the opinion sets out the two classes of cases with reference to which a distinction has been made. One class is that which involves personal taste and judgment, examples of which we have shown; and the other class is that where the subject-matter of the contract is such that the satisfaction stipulated for must be held to apply to quality, workmanship, salability, and other like considerations, rather than to personal satisfaction. For example, if one agrees to sell land with a satisfactory title, and shows a title valid and complete, the parties must have intended such a title to be satisfactory, rather than to leave an absolute right in the purchaser to say, 'I am not satisfied,' when no reason could be shown why he should not be satisfied. So, if one agrees to do work in a satisfactory manner, it must mean a workmanlike manner,—as well as it would be expected to be done,—rather than a merely personal or whimsical rejection. It is this class of cases to which the term 'reasonably satisfactory' applies. Hence in the boiler case, last cited, it was held that a simple allegation of dissatisfaction, without some good reason assigned for it, might be a mere pretext, and would not be regarded. In Machine Co. v. Smith, 50 Mich. 565, 15 N. W. Rep. 906, the court says: 'In the one class the right of decision is completely reserved to the promisor, without being liable to disclose reasons or account for his course; and a right to inquire into the grounds of his action and overhaul his determination is absolutely excluded from the promisee and from all other tribunals. In the other class the promisor is supposed to undertake that he will act reasonably and fairly, and found his determination upon grounds which are just and sensible; and from thence springs a necessary implication that his decision, in point of correctness and the adequacy of the grounds of it, is open to consideration, and subject to the judgment of judicial triors.' See, also, McClure v. Briggs, 58 Vt. 82, 2 Atl. Rep. 583; Daggett v. Johnson, 49 Vt. 345; Manufacturing Co. v. Brush, 43 Vt. 528; 1 Beach. Mod. Cont. § 104. Even in cases of the latter class, where a rejection is made in good faith, the dissatisfaction of the purchaser is held in many decisions to be sufficient. See note to Boiler Co. v. Garden, 54 Am. Rep. 711, 4 N. E. Rep. 749."

BILLS AND NOTES—DEMAND OF PAYMENT ON RECEIVER.—It is decided by the Supreme Court of Oregon, in Jackson v. McInnis, that a demand upon the receiver of a bank, which issued a certificate of deposit, is insufficient to charge an indorser, as the receiver is not an agent of the bank, nor authorized to pay the certificate. "It would seem," says the court, "necessarily to follow, therefore, from the very nature of the contract, that the presentment for payment must be made

to the person whose duty it is to pay, or to an agent or person duly authorized to act in the premises. 1 Daniel, Neg. Inst. § 588; Tied. Com. Paper, § 313. Now, the receiver *pendente lite* of a corporation is not the agent of the corporation, nor is it his duty to pay or discharge any of its obligations, except as he may be directed by the court. He is an officer of the court, to preserve and distribute the assets of the insolvent corporation, and has no power other than that conferred upon him by the order of his appointment, or such as may be derived from the general practice of the courts of equity in such cases. High, Rec. § 1; Farmers' Loan Co. v. Oregon Pac. R. Co., 31 Oreg. 237, 48 Pac. Rep. 706. A demand upon him for the payment of the debts of the corporation would, therefore, be a useless proceeding, because he has neither the power nor authority to pay them. That duty still rests upon the corporation, notwithstanding its insolvency and the appointment of a receiver. Neither of these events amount to a dissolution of the corporation, nor relieve it from the duty of paying its obligations. Bank of Bethel v. Pahquioque Bank, 14 Wall. 383; Decker v. Gardner, 124 N. Y. 334, 26 N. E. Rep. 814; Chemical Nat. Bank of Chicago v. Hartford Deposit Co., 161 U. S. 1, 16 Sup. Ct. Rep. 439. It continues to exist as a corporate entity, and its insolvency constitutes no excuse for neglect to make due presentment for payment of its paper, or to give notice of dishonor to an indorser thereof. Hawley v. Jette, 10 Oreg. 31. The case of Armstrong v. Thruston, 11 Md. 148, is quite analogous to the case in hand, and supports the conclusion to which we have arrived. In that case the demand of payment was made upon an assignee of the maker of the note for the benefit of creditors, and it was held that it was not sufficient, because the insolvency of the maker did not excuse demand and notice, and the assignee was not his agent, nor was it his duty to pay the note; and the court say no case has been found in which a demand of payment on a person standing in such a relation to the maker of the note has been held sufficient. The case of Ballard v. Burton, 64 Vt. 387, 24 Atl. Rep. 769, cited by the defendant, is not in point. That was an action against a person who joined with the bank as maker of a certificate of deposit, and his undertaking was to pay the plaintiff the amount called for by the certificate when it, properly indorsed, should be returned to the bank. Before its maturity, the bank failed, and the question was whether a return of the certificate to the receiver was a sufficient compliance with the terms of the contract. There was no question in the case as to the rights or liabilities of an indorser, and no discussion or consideration of that question. The same may be said of the case of Hutchison v. Crutcher (Tenn. Sup.), 39 S. W. Rep. 725."

NEGLIGENCE—PROXIMATE CAUSE—SHOOTING DOG.—In Isham v. Dow's Estate, 41 Atl. Rep. 585, decided by the Supreme Court of Vermont, it appeared that defendant knowing himself to be a poor shot and to have impaired eyesight, unlawfully and maliciously shot at and wounded plaintiff's dog, lying peaceably and in close proximity to plaintiff's house, on the land of a third person, whereupon the dog rushed into plaintiff's house and ran against plaintiff, knocking her down and injuring her. It was held, reversing the lower court, that defendant was liable, since his acts were the proximate cause of the injury, without an intervening force; and it is immaterial whether the injury was, or could have been, foreseen. The court said in part: "When negligence is established, it imposes liability for all the injurious consequences that flow therefrom, whatever they are, until the intervention of some diverting force that makes the injury its own, or until the force set in motion by the negligent act has so far spent itself as to be too small for the law's notice. But, in administering this rule, care must be taken to distinguish between what is negligence, and what the liability for its injurious consequences. On the question of what is negligence, it is material to consider what a prudent man might reasonably have anticipated; but, when negligence is once established, that consideration is entirely immaterial on the question of how far that negligence imposes liability. This is all well shown by Stevens v. Dudley, 56 Vt. 158, and Gibson v. Canal Co., 65 Vt. 213, 26 Atl. Rep. 70. The rule is the same in England, as will be seen by referring to the leading case of Smith v. Railway Co., L. R. 6 C. P. 14, in the exchequer chamber. In Sneesby v. Railway Co., 1 Q. B. Div. 42, a herd of plaintiff's cattle were being driven along an occupation road to some fields. The road crossed a siding of the defendant's railway on a level, and when the cattle were crossing the siding the defendant's servants negligently sent some trucks down the siding among them, which separated them from the drovers, and so frightened them that a few rushed away from the control of the drovers, fled along the occupation road to a garden some distance off, got into the garden through a defective fence, and thence on to another track of the defendant's railway, and were killed; and the question was whether their death was not too remote from the negligence to impose liability. The court said: That the result of the negligence was twofold: First, that the trucks separated the cattle; and, second, that the cattle were frightened, and became infuriated, and were driven to act as they would not have done in their natural state. That everything that occurred or was done after that must be taken to have occurred or be done continuously. And that it was no answer to say that the fence was imperfect, for the question would have been the same, had there been no fence there. Their liability was made to depend, not on the nearness of the wrongful act, but on the want of power to divert or avert its consequences, and it continued until the first impulse spent itself in the death of the cat-

tle. See Ricker v. Freeman, 50 N. H. 420, 9 Am. Rep. 267; Railroad Co. v. Chapman, 80 Ala. 615, 2 South. Rep. 738. Ellis v. Cleveland, 55 Vt. 358, is not in conflict with the Vermont cases above cited, as is supposed; for there there was no causal connection between the wrongful act and the injury complained of, and so there could be no recovery. As illustrative of non-liability for damage flowing from an intermediate and independent cause operating between the wrongful act and the injury, see Holmes v. Fuller, 68 Vt. 207, 34 Atl. Rep. 699. Ryan v. Railroad Co., 35 N. Y. 210, is relied on by the defendant. Railroad Co. v. Kerr, 62 Pa. St. 353, is a similar case. It is said in Railroad Co. v. Kellogg, 94 U. S. 474, that these cases have been much criticised; that if they were intended to hold that when a building has been negligently set on fire, and a second building is fired from the first, it is a conclusion of law that the owner of the second has no remedy against the negligent wrongdoer, they have not been accepted as authority for such a doctrime even in the States where they were made, and are in conflict with numerous cases in other jurisdictions. Judge Redfield says in 13 Am. Law Reg. (N. S.) 16, that these cases have not been countenanced by the decisions in other States. And Judge Cooley says that a different view prevails in England and most of the American States; that the negligent fire is regarded as a unity; that it reaches the last building, as a direct and proximate result of the original negligence, just as a rolling stone put in motion down a hill, injuring several persons in succession, inflicts the last injury as a proximate result of the original force as directly as it does the first, though if it had been stopped on the way, and started again by another person, a new cause would thus have intervened back of which any subsequent injury could not be traced; that proximity of cause has no necessary connection with contiguity of space nor nearness of time. Cooley, Torts (1st Ed.), 76."

MUNICIPAL CORPORATION — CITIES—LIABILITY FOR TORT OF MAYOR — RATIFICATION. — In Commerical Electric Light & Power Co. v. City of Tacoma, 55 Pac. Rep. 219, decided by the Supreme Court of Washington, it was held that a city ratifying the trespass of its mayor in having electric wires torn down from where they had a right to be is liable therefor. It was further held that it is a question for the jury whether the trespass of a mayor in having the wires of a company, competing with the city in furnishing electric light, torn down from where they had a right to be, was ratified by the city, suit having immediately afterwards been begun by it to enjoin the company from putting any wires where it had formerly had them. The court said in part: "Mr. Dillon, in discussing this question, after laying down the rule that, to create the liability, the act must be done within the scope of the corporate powers, and that, if the act complained of necessarily lies wholly outside of the general or special powers of the corporation as conferred in its charter or by statute, the corporation can in no event be liable to an action for damages, says (sec. 968): 'But, if the wrongful act be not in this sense *ultra vires*, it may be the foundation of an action of tort against the corporation, either when it was done by its officers under its previous direct authority, or has been ratified or adopted, expressly or impliedly, by it;' and in section 969a, continuing, says: 'In the two preceding sections we have used the word "*ultra vires*" in the sense of meaning an act which both intrinsically and in its external aspects is, under all circumstances, wholly and necessarily beyond the possible scope of the chartered powers of the municipality.' So that, under this text, the action of the mayor in this respect does not fall within the definition of '*ultra vires*.' A case which seems to us squarely in point here, although its application is denied by the respondent, is that of McGary v. President, etc., 12 Rob. (La.) 668. In that case, McGary had a building on what the mayor believed to be public land. He proceeded at the head of a force of laborers, and demolished a part of plaintiff's house, for the supposed reason that it was on public ground; and the city ratified the act by defending it. It was held that, although the acts of the mayor were done without any order from the town council, yet, by reason of its subsequent ratification, the town was liable. We do not think that under any of the modern authorities, at least, the ratification need necessarily be made by ordinance, but that any acts which tend to show ratification on the part of the city may be submitted to the jury in proof of ratification. It would be difficult to lay down a universal rule in regard to the proof of ratification, for every case depends upon the circumstances surrounding it. In this case, for instance, the fact that the city was in competition with the plaintiff would justify a character of proof to prove ratification that might not be admissible in a different kind of case; and we think that any testimony tending to show the action of the city authorities in relation to this act of the mayor ought to be admitted for the purpose of determining the fact whether such action was ratified by the city. The proofs offered were all competent for this purpose, and should have been admitted."

CONSENT IN ITS RELATION TO CRIMINAL LIABILITY.

It is a general rule, that criminal liability can neither be incurred nor avoided in consequence of the acts of third persons. The consent or license of one whose person or property is affected by what would ordinarily be redressed as a tort is a sufficient bar to a civil suit; but it cannot operate as a bar to a crim-

inal prosecution, if the act in question falls within the definition of a crime. The object of a civil action is, to obtain compensation for the wrong done to the plaintiff; and a person is deemed not to be wronged by that to which he has consented or directly contributed. In a criminal case, the State, or government, is the plaintiff, and the object of the proceeding is to punish the wrong done to the public. No man can license or condone that which the law prohibits upon grounds connected with the public peace and welfare. Thus, if parties fight by mutual consent, the consent may be shown in mitigation of damages in a civil suit; but in a criminal proceeding, in which the State complains of the breach of the public peace involved, each is deemed to have assaulted the other, notwithstanding the consent.[1] The principle underlying the doctrine here involved is of wide application. Stated in its broadest terms, it may be expressed to the effect, that liability to punishment for crime cannot be affected by any acts independent of the act of the offender himself at the time of the commission of the alleged offense. Excluded as factors in the determination of criminal liability, both as to inculpatory and exculpatory operation, are the acts and conduct of third persons as well as the subsequent or prior acts of the party himself, so far as these are not directly connected with the commission of the alleged offense. No person can be subjected to the penalty of an offense upon any mere technical or legal imputation of guilt.[2] Hence, the doctrines of *respondeat superior*[3] and trespass *ab initio*[4] have no place in the criminal law. An act not criminal when committed cannot be deemed criminal by reason of any subsequent act of the party;[5] nor, on the other hand, can punishment for guilt once incurred be avoided by such acts as satisfaction or restoration to an individual[6] or the public.[7] Again, the defense of contributory negligence,[8] and the rule of *par delictum*[9] have no operation in the criminal law; and, upon the same principle, such matters as agreement, compromise or ratification cannot be set up as defenses.[10] There is a class of cases in which the fact, that the act charged was done with the consent of a particular person operates as a defense. Such cases, however, do not form any real exception to the rule above stated. They are cases in which the fact, that the act in question was done against the consent or will of a particular person enters into the definition of the particular offense—forms an element of criminality. The operation of consent here is a strictly negative one; it does not lead to any direct legal consequences, nor change existing legal relations, nor authorize or empower the doing of any act; it simply negatives the non-consent which is of the gist of certain offenses—"offenses involving the absence of consent as an essential constituent."[11] Thus, it is essential to the crime of larceny that there should be a taking "against the will" of the owner, and to the crime of burglary that there should be a "breaking" of another's dwelling house; and these crimes are not committed when, with the consent of the owner, his goods or chattels are taken, or his dwelling is entered, however guilty the person's purpose and intent.[12] Difficulty in the application of this doctrine arises mainly in cases where the owner has laid a plan to entrap a suspected felon. There is no consent if the owner merely leaves, or places, it in the power of the party to take his property or enter into his dwelling; but, if the owner does anything that amounts to a procuring of the taking or the entry, there is consent.[13] If a person merely allows himself to be robbed,[14] or directs his servant or agent merely to encourage or lead on another to take his goods,[15] there is deemed to be no consent to the taking. In a case, however, where a person en-

[1] Reg. v. Coney, 15 Cox C. C. 46; Com. v. Collberg, 119 Mass. 350.

[2] Davis v. U. S., 160 U. S. 469; Com. v. Tobin, 108 Mass. 426; State v. Hutchinson, 60 Iowa, 478.

[3] 1 East, P. C. 331; Com. v. Lewis, 4 Leigh (Va.), 664; State v. Berkshire, 2 Ind. 207.

[4] Com. v. Tobin, *supra*.

[5] U. S. v. Fox, 95 U. S. 670.

[6] Fleener v. State, 58 Ark. 98.

[7] Robson v. State, 83 Ga. 166, 170.

[8] Reg. v. Longbottom, 3 Cox C. C. 439; Reg. v. Kew, 12 *Ib.* 355.

[9] Reg. v. Hudson, 8 Cox C. C. 305; Com. v. Morrill, 8 Cush. 571; Com. v. Smith, 129 Mass. 104; *In re* Cummins, 16 Colo. 451.

[10] State v. Frisch, 45 La. Ann. 1283; Barker v. Com., 80 Va. 820; Com. v. Slattery, 147 Mass. 423; State v. Tull, 119 Mo. 421.

[11] Chand., L. of Consent, 10 15, 340.

[12] Connor v. People, 18 Colo. 373.

[13] Reg. v. Lawrance, 14 Cox C. C. 438; State v. Covington, 2 Bailey (S. Car.), 569; People v. McCord, 76 Mich. 200.

[14] People v. Hanselman, 76 Cal. 460.

[15] Alexander v. State, 12 Tex. 540; State v. Stickney, 53 Kan. 308.

tering a dwelling is instigated or aided by the owner, or by a servant or detective employed by the owner, who solicits or decoys him to enter, there can be no burglary in contemplation of law.[16] Upon a charge of rape, it is necessary to be shown, from the nature of the offense, that the carnal knowledge was against the consent of the woman;[17] but, in cases of carnal abuse of female children, non-consent does not enter as an element into the definition of the offense, and the fact of consent affords no defense.[18] Non-consent being of the *corpus delicti* in certain cases referred to, it follows that if there be consent in fact, there is no criminality, it matters not how the consent was procured. It is sometimes said that fraud "vitiates" consent, that consent "unduly obtained" cannot be set up as a defense. This method of statement, it is submitted, is inaccurate and misleading.[19] Consent implies, (1) a free exercise of the will, (2) knowledge or understanding of the thing which is the subject of the agreement, and (3) concurrence of wills.[20] In the absence of any of these elements there can be no real consent. If all co exist, there is consent, and the manner in which the intention, or state of mind, has been brought about is immaterial. Consent, in the first place, excludes the idea of compulsion, whether it be in the nature of physical force, or, its equivalent, moral compulsion. If resistance is overcome, or action coerced, through fear, there is no consent.[21] Consent further, within certain limitations, excludes the ideas of ignorance and mistake. A person cannot be said to have consented to a thing, if there was a mere voluntary submission thereto. Thus, the mere submission of a child of tender years to an indecent act is not consent.[22] So, in the case of a man to whom a girl under fourteen years was sent for medical treatment and who had carnal knowledge of her under pretense of such treatment, it was held, that if she made no resistance because ignorant of the nature of the act and believing it to be medical treatment, there was no consent.[23] Even if a woman, knowing the nature of the act, is induced to submit under the belief, that a surgical operation is being performed, there is no consent.[24] If, however, a woman is induced to submit to sexual commerce by means of the fraudulent representation, that what she knows to be such is essential to a course of medical treatment, she is said to consent, and her consent, although fraudulently obtained, prevents the act from being rape.[25] It would likewise seem, that a consent obtained by means of a fraudulent personation of the woman's husband prevents the act from being rape.[26] Concurrence of wills being essential, it follows, that there is no consent, unless the thing contemplated by the person acting and the person acquiescing was the same. "Two or more persons are said to consent, when they agree upon the same thing in the same sense." Where different objects or purposes are had in view, there is no meeting of minds and no consent. The principle is of the widest application. The courts have uniformly refused to give the effect of consent to a permission or license to do a particular thing, when the thing done, although outwardly conforming to the license, essentially varied from the real purpose of the person claimed to have assented. A person who permits a man to take away his child for the purpose of procuring her employment, cannot be said to have consented to the taking away, if the man afterwards debauches her.[27] Guilt is incurred under a statute punishing the taking of a woman against her will with intent to compel her to be defiled, if she was induced to go upon a representation of another purpose and then forcibly defiled.[28] Where a mother consented to the taking away of her daughter by a man representing his design to be marriage, there was held to be no consent of the mother

[16] Speiden v. State, 3 Tex. App. 156; Love v. People, 160 Ill. 501; State v. Hull (Oreg.), 54 Pac. Rep. 159.

[17] Mills v. U. S., 164 U. S. 644.

[18] People v. McDonald, 9 Mich. 150; Com. v. Roosnell, 143 Mass. 32.

[19] Whittaker v. State, 50 Wis. 518; Bloodworth v. State, 6 Baxt. (Tenn.) 614.

[20] Chand. L. of Consent, 19.

[21] Cliver v. State, 45 N. J. L. 46; Rice v. State, 35 Fla. 236.

[22] Reg. v. Lock, 12 Cox C. C. 244.

[23] Reg. v. Case, 4 Cox C. C. 220.

[24] Reg. v. Flattery, 13 Cox C. C. 388; Pomeroy v. State, 94 Ind. 96.

[25] Don Moran v. People, 25 Mich. 356; Walter v. People, 50 Barb. 144.

[26] Reg. v. Barrow, 11 Cox C. C. 191; Reg. v. Francis, 13 U. C. Q. B. 116; Don Moran v. People, *supra*; Walter v. People, *supra*; Lewis v. State, 30 Ala. 54. *Contra:* Reg. v. Dee, 15 Cox C. C. 579.

[27] Reg. v. Hopkins, Car. & M. 254; People v. De Leon, 109 N. Y. 226.

[28] Beyer v. People, 86 N. Y. 369.

to preclude her from afterwards suing for the seduction of the daughter.[29] In the law of larceny, the well-settled doctrine obtains, that if a person, by fraudulent means, obtains a thing with the consent of the owner, the taking is, or is not, larceny, accordingly with the owner's intent to part with the possession merely, or with property as well as possession. The rule, as thus stated, is an apparently arbitrary one, based upon what seems to be a purely technical distinction between fraud in obtaining possession merely and fraud in cheating outright. The boundary between possession fraudulently obtained and title fraudulently acquired is often a shadowy one,[30] and the cases and discussions on this branch of the law abound in subtlety and ingenuity of reasoning. There is one reason, however, inherent in the very nature of things, upon which the courts have perhaps unconsciously acted, by which the rule may be accounted for upon a rational and logical basis, and its application rendered plain in cases of apparent difficulty. The true distinction, in cases of obtaining money or chattels by a fraudulent device, between a taking that falls within the penalty of larceny and one that does not appears to rest upon the matter of consent as dependent upon the element of concurrence of wills. A fraudulent taking and conversion of another's goods, where there has been a voluntary delivery by, or under authority of, the owner, does not constitute larceny, unless the taker contemplated a conversion, while the owner contemplated a return to him or a disposal under his direction.[31] Cases of obtaining mere possession by fraud, title remaining in the owner, resolve themselves, in their ultimate analysis, into cases where the owner resolves to part with his chattel for a special purpose, *e. g.*, to be applied for his benefit, or that of a third person, but the other party to the transaction takes it with intent to convert to his own use. There is, in such cases, substantially and in effect a taking against the will of the owner. Different objects or purposes were had in view; there was no meeting of minds, no consent in the full sense of the term. The distinction referred to seems to run through all the cases. Thus, obtaining goods from the owner on credit does not amount to larceny, though the credit was induced by a false representation; but obtaining goods on condition of cash payment, not intending to pay for them, is larceny. So the offense of larceny is committed in cases where the owner parts with the possession, not with the intent of conferring title upon the receiver, but merely that he should use the thing delivered for a specific purpose, and the latter takes with intent to convert to his own use.[32] It is immaterial, in such cases, that the money or other thing was obtained under a promise or contract, if such promise or contract was a mere trick to get possession.[33] Even, as in the case of fake "employment agencies," if an owner takes the party's note, or similar "security," in lieu of his money, the offense of larceny is deemed to have been committed.[34] In cases of fraudulent gaming, if the owner has actually staked his money or chattel on the chances of the game, the offense of the taker is not larceny;[35] but if he is merely tricked into depositing his money with one who intends to keep it in any event, the wager being a mere device to secure possession, the offense of the taker is larceny.[36] In the case of money paid or goods delivered by mistake, title does not pass. According to what seems the better view, if the mistake is a mutual one, the mere appropriation upon discovery of the mistake does not constitute the wrongful intent requisite in larceny;[37] but a taking with knowledge of the mistake and intent to convert to the use of the receiver does amount to larceny, there being no real intent on the part of the owner to divest himself of his title. Cases and illustrations might be multiplied, but it is believed that what has been said justifies the view taken as to the place of consent in the criminal law and as to the true meaning and nature of consent.

Baltimore, Md. LEWIS HOCHHEIMER.

[29] Lawyer v. Fritcher, 54 Hun, 586.

[30] Fleming v. State, 136 Ind. 149; Crum v. State, 148 *Ib.* 401.

[31] Kellogg v. State, 26 Ohio St. 15.

[32] Smith v. People, 53 N. Y. 111.

[33] Reg. v. Bunce, 1 F. & F. 523; People v. Hughes, 91 Hun, 354; Com. v. Lannan, 153 Mass. 287; Com. v. Flynn, 167 *Ib.* 460; Walters v. State, 17 Tex. App. 226.

[34] People v. Tomlinson, 102 Cal. 21.

[35] Reg. v. Solomons, 17 Cox C. C. 93.

[36] Reg. v. Buckmaster, 16 Cox C. C. 439; People v. Shaughnessy, 110 Cal. 598.

[37] Reg. v. Hehir, 18 Cox C. C. 269; State v. Williamson, 1 Houst. Cr. (Del.) 155; Bailey v. State, 58 Ala. 414. *Contra:* Wolfstein v. People, 6 Hun, 121; State v. Ducker, 8 Oreg. 394.

CARRIERS — DUTY TO PASSENGERS — LIABILITY FOR ASSAULT BY EMPLOYEE.

HAVER v. CENTRAL R. CO.

Court of Errors and Appeals of New Jersey, Nov. 14, 1898.

A carrier of passengers is liable in that capacity for injuries to a passenger resulting from an assault by one of its employees, although he was not acting within the scope of his employment.

DEPUE, J.: The declaration in this case is in tort. It avers that the plaintiff boarded one of the trains of the defendant, the Central Railroad Company, a common carrier for the transportation of passengers and baggage between the city of Elizabeth and Bayonne, and that he did thereupon pay the said defendant his fare for passage; that while a passenger as aforesaid, and traveling in the train of the said company, he was then and there insulted and abused by one Simeon D. Apgar, a baggage master in the employ of the defendant, and with force and arms was, without cause or provocation, assaulted by the said employee of said company, whereby the plaintiff was injured, wherefore he claims damages in the sum of $10,000. The facts as they appeared in evidence were that the plaintiff in December last took passage in the defendant's cars at Elizabethport for Bayonne, Bergen Point; that he took his seat in the passenger compartment of the baggage car; that the baggage master immediately demanded his fare, which the plaintiff refused to give to him, and so the baggage master passed along and called the conductor, and the conductor came in; that, as soon as the conductor came in, he paid him his fare. Then the plaintiff testified: "As I was paying my fare the baggage master stood by the door, and the conductor went out of the door; and he passed along and said, 'You son of a bitch! I am notioned to punch the face off you;' and he grabbed hold of me and shook me, where I sat in the seat. The other passengers interfered, and he broke away from me. He was in the center. He tackled me again, and struck me with all the vengeance he had. I avoided the blow by keeping close to him, and he ran me along the aisle, and slammed me against the water cooler. Finally he let go of me, and threw me into the aisle of the car, against the other seats." On this evidence on the part of the plaintiff the court granted a nonsuit, whereupon the plaintiff sued out this writ of error.

A master is liable for the trespass of his servant committed within the scope of his authority even though in exercising his authority he use unnecessary violence; but for a trespass committed by the servant willfully, or of his own malice, under color of discharging the duties of his employment, or where he has gone beyond the line of his duty to commit a trespass, the master will not be liable. This rule of law, where the relation of master and servant exists, uncontrolled by other circumstances, is well settled. It was so decided by this court in Brokaw v. Transportation Co., 32 N. J. Law, 328. The action in that case was in trespass, for ejecting the plaintiff with force and arms out of the car of the railroad company "while he was traveling in said car," and the case was before the court on demurrer. Whether the plaintiff was lawfully a passenger in the company's car, and entitled to the privileges and protection due from the carrier to its passengers, does not appear in the case. The plaintiff in this case became a passenger in the defendant's car, and at the time of this occurrence had paid his fare to the conductor, and was entitled to all the rights, privileges, and protection which the law accords to passengers, and subject to the duties and liabilities which the law imposes on a carrier for the safety of its passengers. The case now before the court depends, not upon the law of liability of a master for the acts of his servants, but upon the duty imposed on the railroad company in the carriage of the plaintiff as a passenger. The duty of a carrier of passengers is to safely and securely carry persons who bear to it the relation of passengers. The carrier is under obligation to use the utmost care and diligence in providing suitable and sufficient vehicles for the conveyance of its passengers, to carry the passenger therein to the end of his route, to protect him against assault and other ill treatment by those employed by and under the carrier's control while on the way, and to exercise the utmost vigilance and care in maintaining order and guarding the passenger against violence, from whatever source arising, which might reasonably be anticipated or naturally expected to occur in view of all the circumstances, and the number and character of persons on board. Cooley, Torts, 644; 5 Am. & Eng. Enc. Law (2d Ed.), 541. In the application of this principle, the grade of the employee by whom the injury was done, or the scope of his employment, is immaterial. The courts of England seem to apply to such a situation the ordinary rule that prevails as between master and servant. Allen v. Railway Co., L. R. 6 Q. B. 65; Walker v. Railroad Co., L. R. 5 C. P. 640; Railway Co. v. Broom, 6 Exch. 314. In Isaacs v. Railroad Co., 47 N. Y. 122, the court of appeals of New York held that the defendant was not liable for the act of the conductor in pushing a passenger from the car while it was in motion. The decision was put upon the ground that the act of the conductor was a wanton and willful trespass, not in the performance of any duty to, or any act authorized by, the defendant, and therefore the defendant was not liable. This case was overruled in Stewart v. Railroad Co., 90 N. Y. 588. In that case the plaintiff, while a passenger on one of the defendant's street cars, was unjustifiably attacked and beaten by the driver, who also acted as conductor. It was held by the court that the rule relieving the master from liability for a malicious injury inflicted by his servant when not acting in the scope of his employment did not apply as between a common carrier of passengers, and a

passenger, and the principle was affirmed that a common carrier undertakes to protect the passenger against any injury arising from the negligence or willful misconduct of its servants while engaged in performing a duty which the carrier owes to the passenger. Isaacs v. Railroad Co. was set aside, in the decision of this case, on the ground that that case had been determined by the court upon the assumption that the rule of the master's liability for the assault of a servant committed upon a person to whom the master owed no duty was applicable to that case. Stewart v. Railroad Co. was affirmed and followed in Dwinelle v. Railroad Co., 120 N. Y. 117, 24 N. E. Rep. 319, in which it was held that, whatever be the motive that incites the servant to commit an unlawful and improper act toward the passenger during the existence of the relation of carrier and passenger, the carrier is liable for the act, and its natural and legitimate consequences. This liability was deduced from the obligation of the carrier to protect the passenger against any injury from negligence or willful misconduct of its servants while it performed its contract to carry. In some of the cases, in defining the liability of a carrier of passengers for the willful acts of its servants, the expression "within the scope of employment," or "in the line of duty," is used. Neither of these expressions, in the usual sense, is applicable to this subject, except as descriptive of circumstances under which the liability of the carrier is unchallenged. Thus in Steamboat Co. v. Brockett, 121 U. S. 638, 7 Sup. Ct. Rep. 1039, the court held that a common carrier undertakes absolutely to protect his passengers against the misconduct or negligence of his own servant employed in executing the contract of transportation, and acting within the general scope of his employment. In that case the action was founded upon an assault committed by a servant upon a passenger in enforcing rules and regulations of the company, and consequently the act was done while the servant was acting within the general scope of his employment. The case did not call for the consideration of the liability of the master under other circumstances; and it will be observed that Mr. Justice Harlan, in delivering the opinion of the court, quotes with apparent approbation the principle adopted in Stewart v. Railroad Co., 90 N. Y. 588-591, that a common carrier is bound, as far as practicable, to protect his passengers, while being conveyed, from violence committed by strangers and co-passengers, and undertakes absolutely to protect them against the misconduct of his own servants engaged in executing the contract. The expressions above quoted, used in the cases, seem to mean nothing more than that the carrier is not liable for the acts of the servant when he is off from the duties of his employment, and consequently not employed in executing the carrier's contract of transportation. In Pendleton v. Kinsley, 3 Cliff. 416, Fed. Cas. No. 10,922, the suit was against the owner of a steamboat on which the plaintiff was a passenger. A dispute arose between the plaintiff and the clerk about the payment of fare. Subsequently the plaintiff was assaulted by the clerk on board the vessel, and during the same trip. The defense was that the clerk was not at the time of the assault acting in the course of his employment, and therefore the owner of the vessel was not responsible for his acts. Mr. Justice Clifford, in overruling the defense, said that "the principles of law applicable in litigations growing out of the relations of principal and agent or master and servant are not the principles which fully define the rights, duties, obligations and liabilities of the parties to this controversy." Speaking of the defense, the learned judge said: "Adjudged cases may be referred to which support that proposition without qualification, but they do not give full scope and effect to the obligation which the carrier assumes toward his passenger, nor to the rights and duties which those relations create and imply. Passengers do not contract merely for ship room and transportation from one place to another, but they also contract for good treatment, and against personal rudeness and every wanton interference with their persons, either by the carrier or his agent employed in the management of the ship or other conveyance, and for the fulfillment of those obligations the carrier is responsible as principal; and the injured party, in case the obligation of good treatment is broken, whether by the principal or his employees, may proceed against the carrier as the party bound to make compensation for the breach of the obligation." The above extract from Pendleton v. Kinsley is quoted with approbation in Bryant v. Rich, 106 Mass. 180-189. The liability of the carrier in such cases rests upon the principle that he has engaged to perform certain duties, and has selected his own servants for the performance of those duties, and hence an assault by an employee is a breach of the duty of the carrier to his passenger. This subject is discussed by Mr. Elliott as follows: "There is much apparent conflict among the authorities upon this subject, but we think some of it is due to the use of the term 'scope of employment,' or 'line of duty' in a different sense in different cases, or to a failure to place the decision on the correct ground. It is not merely a question of negligence in such cases, nor is it a question strictly depending upon the scope of the servant's particular employment. It is a question of the absolute duty of a railroad company to its passengers as long as that relation subsists, and a breach of that duty on its part, whether caused by the willful act of an employee or not. * * * Either the company or the passengers must take the risk of infirmities of temper, maliciousness and misconduct of the employees whom the company has placed upon the train, and to whom it has committed the discharge of its duty to protect and look after the safety of its passengers. A passenger has no control over them, and the company alone has the

power to select and remove them. It is, therefore, but just to make the company, rather than the passengers, take this risk, and to hold it responsible." 4 Elliott, R. R. § 1638. The cases on this subject in the courts of our sister States are not harmonious, but the great weight of authority is in favor of the doctrine declared by the New York cases which have been cited. The decisions are collected in an elaborate note to 5 Am. & Eng. Enc. Law (2d Ed.), 541-548. It is quite unnecessary to reproduce them here. The doctrine that a common carrier of passengers undertakes to carry a passenger safely and securely is nowhere impugned, and to apply to assaults upon a passenger by one of its employees the doctrine that rests solely upon the relation of principal and agent is to overlook the peculiar obligation that rests upon the carrier of passengers, and the liability which results from the failure to discharge that obligation. In actions against common carriers, the plaintiff may sue in *assumpsit* on the contract to carry, or in case on the common-law duty. 1 Saund. Pl. & Ev. 325. Under the evidence appearing on the record, the nonsuit should not have been granted, and the judgment should be reversed.

NOTE.—*Recent Decisions on the Liability of Carriers of Passengers for Injuries Caused by Unauthorized Acts of Employer.*—A railroad company is not liable for injuries caused by the explosion of a torpedo placed on the track by a station agent, where it appears that the agent placed the torpedo on the track merely for the purpose of hearing the explosion, and not as a signal to any train, that torpedoes were not furnished to station agents for their own use, and that the rules of the railroad company forbade placing them near stations. Smith v. New York Cent. & H. R. R. Co., 78 Hun, 524, 29 N. Y. S. 540. A railroad company is liable for the acts of its section men in dumping rock and dirt against and into another's house, while engaged in work ordered to be done, though the injurious acts were not expressly authorized. Ft. Worth & N. O. Ry. Co. v. Smith (Tex. Civ. App.), 25 S. W. Rep. 1032. A master is liable for injury inflicted by a servant willfully and maliciously, where he is at the time acting in the course of his employment, though he exceeds his authority. St. Louis, I. M. & S. Ry. Co. v. Hackett (Ark.), 58 Ark. 381, 24 S. W. Rep. 881. Where defendant's baggage man, whose authority, as such agent, was merely to carry the baggage of passengers, and property of defendant—was, by arrangement with plaintiff, in the habit of gratuitously carrying drills for the lime company of which plaintiff was foreman, and throwing them out of the baggage car near the lime quarry, and it was not known by defendant's officers that he was carrying them as its agent, it is not liable for an injury to plaintiff, who was struck by the drills as they were thrown from the car by the baggage man. Walker v. Hannibal & St. J. R. Co. (Mo. Sup.), 26 S. W. Rep. 360. Defendant's servant, in charge of a gravel train, took plaintiff, a seven year old boy, on the train with him. The train being sidetracked, plaintiff said that he wanted to go home, and said servant advised him to get on an approaching freight train. Plaintiff got on a heap of gravel between the tracks, and caught hold of the caboose. As he did so, the gravel slipped under him, and he was caught by the wheels. Held, that the servant's advice to him was not within the former's scope of employment, and, this being the proximate cause of the injury, plaintiff could not recover. Keating v. Michigan Cent. R. Co. (Mich.), 97 Mich. 154, 56 N. W. Rep. 346. Though a railroad engineer violates an express rule of the company employing him by running his engine from one station to another without orders from the train dispatcher, he is still acting within the line of his employment, and the company will be liable to a passenger for an injury caused by such misconduct. Fitzsimmons v. Milwaukee, L. S. & W. Ry. Co., 98 Mich. 257, 57 N. W. Rep. 127. The conductor of a freight train, under order to carry no passengers, acts within the scope of his authority in ejecting one who has entered his caboose for carriage as a passenger; and the company is liable for the latter's injuries resulting from his ejection while the train was in motion, under such circumstances as rendered it imprudent and reckless to eject him. Stone v. Chicago, St. P., M. & O. Ry. Co. (Wis.), 59 N. W. Rep. 457. The ejection of a passenger is within the line of a conductor's authority, and, if performed by him wrongfully, recklessly, and oppressively, is ground for the recovery of exemplary damages from the company. Lucas v. Michigan Cent. R. Co., 98 Mich. 1, 56 N. W. Rep. 1039. A railroad company is liable for injury resulting to a passenger from an unprovoked assault made upon him by an employee of the company, though such employee is not acting in the line of his duty. Houston & T. C. R. Co. v. Washington (Tex. Civ. App.), 30 S. W. Rep. 719. In an action against a steamboat company to recover damages for the death of one wrongfully killed by the mate of the steamboat on which he was a passenger, it is no defense that the class of men usually employed on steamboats are quarrelsome and violent. Memphis & C. Packet Co. v. Pikey (Ind. Sup.), 40 N. E. Rep. 527. A carrier is liable to a passenger where one of the crew goes outside of his line of duty to assault him. White v. Norfolk & S. R. Co., 115 N. Car. 631, 20 S. E. Rep. 191. In an action against a railroad company for an assault by its conductor on a passenger, where it appeared that the latter, as he presented his ticket, made a remark to the conductor, who thereupon struck the plaintiff with his fist, and then with his lantern, it was proper to refuse to charge that if the jury believed that plaintiff used foul and abusive language to the conductor, which caused or provoked the assault, and that, in making such assault, the conductor was not acting without the scope of his duties, but was carrying out a personal purpose and feeling, the company would not be liable. Baltimore & O. R. Co. v. Barger (Md.), 30 Atl. Rep. 560. A carrier is not liable because the agent at a depot, at which a passenger was waiting for a train, was cross, and refused to tell her the name of the town or where she could find an hotel, and, on her asking for water, merely pointed to a tank some distance away, or because men and boys around the station jeered and laughed at her. Missouri, K. & T. Ry. Co. of Texas v. Kendrick (Tex. Civ. App.), 32 S. W. Rep. 42. A declaration relying on the negligence of defendant's flagman in directing plaintiff to alight from a moving train in the dark at an unsafe place, which failed to allege that the flagman had authority to give such direction, or that the giving of it was within the scope of his duties, or that he gave it by direction of the conductor, was insufficient. Savannah, F. & W. Ry. Co. v. Wall, 96 Ga. 328, 23 S. W. Rep. 197. Where a passenger put out his hand to prevent from shutting a car door which the porter had just slammed, without knowledge that the passenger was following him, and the passenger's

thumb was caught and crushed by the door, the company was not liable. Ham v. Georgia Railroad & Banking Co. (Ga.), 24 S. E. Rep. 152. The fact that the driver of a team of horses, hitched to a carriage in which persons were riding, stopped near a mill from which the noise of escaping steam or of a steam whistle might frighten the horses, and failed to retain possession of the lines, or to adopt any means to control them, or prevent them from running away, while he was engaged in closing the windows in the carriage, furnishes reasonable grounds to justify a jury in finding that he was careless and incompetent. Benner Livery & Undertaking Co. v. Busson, 58 Ill. App. 17. There having been an altercation between a passenger and a brakeman, the conductor, on the train's arrival at a station, reported the fact to a superintendent, who advised that the passenger be removed from the train, and thereupon the conductor procured an officer, and, going into the car where the passenger was peaceably sitting, caused his arrest without a warrant, and his removal from the train, and subsequent imprisonment. Held, that the company was liable for the false imprisonment. Atchison, T. & S. F. R. Co. v. Henry, 55 Kan. 715, 41 Pac. Rep. 952. A passenger who is unjustifiably assaulted and beaten by a brakeman on the train may recover of the company. Atchison, T. & S. F. R. Co. v. Henry, 55 Kan. 715, 41 Pac. Rep. 952. In an action against a street-railway company for personal injuries, plaintiff is entitled to recover if, while on defendant's car as a passenger, he was abused by defendant's conductor, and if the abuse was continued to the sidewalk, and plaintiff was knocked down by the conductor, unless the jury believe that plaintiff was the aggressor, and while on the car abused the conductor, or assaulted him either on or off the car; and, if more force was used by the conductor than was necessary, the company is not responsible, if plaintiff was the aggressor. Wise v. South Covington & C. Ry. Co. (Ky.), 34 S. W. Rep. 894. Decedent, while calling to receive his baggage, was shot by the depot agent of a railway company, on account of abusive language used by decedent to the agent. Held, that a finding by the jury that the agent was acting in the line of his duty, so as to render the company liable for decedent's death, will not be disturbed. Daniel v. Petersburg R. Co. (N. Car.), 117 N. Car. 592, 23 S. E. Rep. 327. The fact that a train official, on telling plaintiff that he was on the wrong train, said that it was going slow, and that he could jump from it, does not subject the company to liability for the consequences of his jumping. Rothstein v. Pennsylvania R. Co. (Pa. Sup.), 171 Pa. St. 620, 33 Atl. Rep. 379. A railroad company, which employs a policeman at a depot to look after passengers, is liable to a passenger for loss of an eye, caused by the policeman striking him with a billy, the passenger having, after being roused from a drunken sleep, and started to his train, merely attempted to come back into the depot. Texas & P. Ry. Co. v. Bowlin (Tex. Civ. App.), 32 S. W. Rep. 918. When a peddler leaves a railroad station, to which he came as a passenger, to engage in his business, his relation as a passenger ceases, and the company is not liable for an assault on him, on the company's grounds outside its station, afterwards committed by its section foreman, because of his ill-will, and not suffered by the company. Krantz v. Rio Grande Western Ry. Co. (Utah), 41 Pac. Rep. 717. The fact that a conductor declined to receive a coin of a peculiar appearance, which, however, was legal tender, in payment of a fare, only because he, in good faith, believed it a counterfeit, did not relieve the carrier from liability for the conductor's ejection of the passenger because of the latter's refusal to pay fare with other money. Atlanta Consol. St. Ry. Co. v. Keeny (Ga.), 25 S. E. Rep. 629. Plaintiff, who, for disorderly conduct, was ejected from a railroad waiting room by the ticket agent in charge, having been injured by the agent in a difficulty on the platform, provoked by his insulting language, the company is not liable, the injury not being inflicted in the course of the agent's employment. Chicago & A. R. Co. v. Randolph, 65 Ill. App. 208. A brakeman, required by the rules of a railroad company to familiarize himself with the rules of the company, which provided for the ejectment of trespassers, and that brakemen should act under the orders of the conductor, wrongfully forced a trespasser from the train while in motion without an order from the conductor. Held, that he acted without authority, and that the company was not liable for the injuries inflicted upon the trespasser. Randall v. Chicago & G. T. Ry. Co. (Mich.), 71 N. W. Rep. 450. A railroad company is not liable for injuries to a trespasser ejected from a train by a brakeman who had no authority to eject him. Hartigan v. Michigan Cent. R. Co. (Mich.), 71 N. W. Rep. 452. Where a flagman, whose duty it is, on discovering a trespasser on a train, to take him to the conductor, and then, if so directed, to stop the train and put him off, ejects a trespasser on his own responsibility while the train is in motion, the company is liable for the resulting injury. Southern Ry. Co. v. Hunter (Miss.), 21 South. Rep. 304. There being no express agent at his destination, after arriving there the passenger went into the express car to get goods billed to him. The train started, but was stopped on the conductor's discovering him in the car, and he was then told to get out because he was delaying the train. This he refused to do unless he could get his express. The conductor then started the train, and the passenger attempted to get out, but, finding that the car had passed the station platform, he tried to withdraw into the car, when he was seized by the conductor, who was on the ground, and pulled out. Held, that whether the conductor was acting within the scope of his duties, he having no authority to eject persons in the express car without right, was for the jury. Fremont, E. & M. V. R. Co. v. Root, 49 Neb. 900, 69 N. W. Rep. 397. A brakeman has no implied authority to eject trespassers. Galaviz v. International & G. N. R. Co. (Civ. App.), 38 S. W. Rep. 234.

JETSAM AND FLOTSAM.

LIABILITY OF CITIES FOR UNSANITARY CONDITION OF JAIL.

The liability of a municipal corporation in an action for damages for death caused by the unsanitary condition of the jail in which deceased was confined is denied in Eddy, as admr., v. Village of Ellicottville, N. Y., decided December 10, 1898, by the Appellate Division of the Fourth (New York) Department. On February 17, 1897, plaintiff's husband and intestate was arrested by one of defendant's peace officers for intoxication, and confined in the village lockup for the entire night, during which time he contracted a severe cold, which terminated in pneumonia, from which disease he died about one week later. It was alleged by the plaintiff's administrator (and the allegations were accepted as true by the court, for the purpose of review) that at the time the deceased was thus

imprisoned the lockup was, and for a considerable period prior thereto had been, in a dilapidated condition, many of the windows being broken, and the room in which the prisoner was confined being not warmed, the exposure thus produced being the cause of his contracting the disease which terminated in his death, as stated. The main question considered by the court was whether, assuming these to be the facts, they constituted a cause of action against the defendant. Adams, J., who wrote the opinion, was unable, after a very careful and exhaustive examination, to find any case arising in this State in which the precise question which is here presented had received adjudication, and there is much conflict of authority in the decisions of other States bearing upon this question. He draws a clear distinction between the powers of a municipality, which he separates into two distinct classes, viz: Governmental or public, and private or corporate. Citing Hill v. City of Boston, 122 Mass. 344, and Lloyd v. City of New York, 5 N. Y. 369. "In the exercise of the first of these powers," said the court, "the city or village is invested with the quality of sovereignty, while in the exercise of the second it occupies the same relation to the individual that any other corporate body does. Justice Adams thinks it clear that the maintaining of a village jail in a safe and healthful condition is an act which does not properly fall within the second class of municipal powers. In the opinion of the court the village of Ellicottville is as much a political division of the State as is the county in which it is located, and this being the case, no reason suggests itself to the court why, in circumstances like those disclosed by the record in this case, it should be subject to any other or different rule of liability for the omission of a public duty. Citing Blake v. Pontiac, 49 Ill. App. 543; Odell v. Schroeder, 58 Ill. 353; Brown v. Guyandotte, 34 W. Va. 299; Gulikson v. McDonald, 62 Minn. 278; La Clef v. Concordia, 41 Kan. 323, and New Kiowa v. Craven, 46 *Id.* 114.—*Albany Law Journal.*

SNOW AND ICE ON THE SIDEWALK.

As we informed our readers in a previous issue the Supreme Court of New Hampshire, in July last, declared that an ordinance requiring citizens to clear the sidewalks in front of their residence from snow was unconstitutional. This decision, we believe, deserves a more extended notice than was then given it. The ordinance declared unconstitutional was one passed by the city of Concord pursuant to the act incorporating that municipality, which authorized it to "compel all persons to keep the snow · · · from the sidewalks in front of the premises owned or occupied by them." It seems that by the statute of New Hampshire municipalities are required to keep the highways "free from obstruction by snow," and for that purpose they are empowered to "raise such sums as they judge necessary each year." Justice Isaac N. Blodgett, in rendering the opinion of the court, gave reasons for holding the ordinance unconstitutional which we deem unanswerable; among others that "a property owner has no other or greater right in or control over that part of the public street in front of his property than any other part of the highways;" and that, the property owner having contributed his proportional share of the public expense of keeping the highways in a suitable condition, there is no constitutional principle by which more can be exacted from him. "In the proposition," said the learned judge, "that, in the exercise of a power to remove nuisances, a private individual may be compelled to remove an obstruction to travel which he did not create, from premises over which he has no control, and which it is the statutory duty of the municipality to keep free from obstruction, we fail to discover any merit except that of novelty."

We cannot bring ourselves to agree with the able editor of the Virginia *Law Register*, who closes an article reviewing this case and other cases in which the contrary doctrine has been asserted, by expressing the hope that when the question arises in Virginia "the court may succeed in finding some grounds for maintaining the validity of the ordinance because of the very great inconvenience that would otherwise result." It seems to us that the rule requiring a municipality to keep its sidewalks free from snow is much more convenient than that which imposes the duty upon the landowner, for the simple reason that the municipality, through its street-cleaning department, can perform the work more effectually and at less cost than the property holders and save them the worry and inconvenience of attending to the matter. In the State of Virginia, for instance, a large part of the street cleaning is done by vagrants and petty offenders confined in the jail, who during the winter months have little or no out-door work to do; and even if men were employed to do the work, it would be better and more economically done under the supervision of the officers charged with keeping the streets in repair.—*Law Notes.*

BOOK REVIEWS.

UNDERHILL ON CRIMINAL EVIDENCE.

This volume, as we are informed in the preface, aims to present First, a concise but comprehensive and systematic treatment of those fundamental doctrines of the law of evidence which are exclusively invoked in the trial of crime. Second. Those rules and principles of the law of evidence which, while not confined in their application to criminal trials, are very frequently under consideration during such proceedings. In successive chapters, it treats of circumstantial evidence and reasonable doubt, presumptions and burden of proof, evidence before the grand jury, the accused as a witness, character of the accused, proof of other crimes, declarations which are a part of the *res gestæ*, dying declarations, consciousness of guilt, continuance, *alibi*, evidence of insanity and intoxication, privileged communications, evidence of former jeopardy, the competency of witnesses, the examination of witnesses, the impeachment of witnesses, the attendance of witnesses, absent witnesses in continuances, the province of judge and jury, embezzlement and larceny, homicide, crimes against the person, offenses against human habitations, sexual crimes, forgery, · · · counterfeiting and false pretenses, offenses against public justice, crimes against public policy, public peace and public health, evidence in international and interstate extradition, evidence of previous crime to increase penalty, newly-discovered evidence, evidence in bastardy proceedings. The work is by Mr. H. C. Underhill, of the New York bar. It is admirably prepared, the text being expressed in clear and concise language and the notes of cases being full and satisfactory. It will undoubtedly be a valuable addition to the literature of the law on the subject, which is of growing importance and value, and upon which there has been more or less of a dearth of text

books. The work contains nearly 700 pages, with an admirable index, well printed and bound, and is published by the Bowen-Merrill Company, Indianpolis and Kansas City.

AMERICAN STATE REPORTS, VOL. 57.

This volume contains many interesting cases and valuable annotations. Among the latter may be mentioned the note to Buck v. Ross (Conn.), on What is a Withdrawing of the Assets of Corporations; note to Trimble v. State (Ind.), on Estoppel against Married Women; note to Victor G. Bloede Co. v. Bloede (Md.), discussing the cases on the subject of the Extent to which Transfers of Stock may be Restricted; note to Russell v. Cole (Mass.), on the Levy in Partnership Assets of a Writ against One Partner only; note to Steamboat Co. v. Wilmington, etc. R. R. Co. (S. Car.), on Remedies for Obstruction of Navigable Waters; note to Whitsides v. Green (Utah), on Highway by User; Memls v. Pabst Brewing Co. (Wis.), on Notice to Attorney as Notice to Client. This admirable series of reports selected important cases is published by Bancroft Whitney Co., San Francisco.

BOOKS RECEIVED.

Bouvier's Law Dictionary, by John Bouvier. A New Edition, Thoroughly Revised and Brought up to Date, by Francis Rawle, of the Philadelphia Bar. Vol. II. Boston: The Boston Book Company, 1897.

The American State Reports, Containing the Cases of Value and Authority Subsequent to Those Contained in the "American Decisions" and the "American Reports," Decided in the Courts of Last Resort of the Several States. Selected, Reported and Annotated, By A. C. Freeman, and the Associate Editors of the "American Decisions." Vol. 59. San Francisco: Bancroft-Whitney Company, Law Publishers and Law Booksellers, 1898.

The United States Internal Revenue Laws now in Force, with Notes Indicating the Derivatory Statutes, and References to Judicial Decisions, Regulations, Rules and Circulars of the Commissioner of Internal Revenue and other Executive Departments Relating Thereto, with an Appendix Containing Laws of a General Nature and Miscellaneous Provisions Applicable to the Administration of the Internal Revenue Laws. By Mark Ash and William Ash, of the New York Bar. New York: Baker, Voorhis & Company, 1899.

HUMORS OF THE LAW.

A Missouri judge begins a recent opinion as follows: "'*Delenda est Carthago.*' Error, unrepentant, must be destroyed. Gentle reader, if you have ever chanced to wander through that wilderness of undigested volumes which Judge Leonard on one occasion said were not law books, but only Missouri Reports, you may-hap have encountered the case of Hickman v. Green, 123 Mo. 165, 22 S. W. Rep. 455, and 27 S. W. Rep. 440. If not, it shall be my pleasing task now to unfold to you the prominent points and salient characteristics of that cause *celebre*."

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

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1. ASSIGNMENTS — Notice.—The mere reading by a debtor in a newspaper that his creditor has assigned generally, without full information as to the character of the assignment, the assignee, and the property assigned, is not sufficient notice to perfect the transfer of his debt.—CHICAGO SUGAR-REFINING CO. v. JACKSON BREWING CO., Tenn., 48 S. W. Rep. 275.

2. ASSIGNMENTS FOR CREDITORS — Fraudulent Conveyances.—An unrecorded mortgage is valid and effective between the parties thereto from the date of its execution; and it is not void as to creditors generally, but only as to creditors whose deeds, mortgages, or other instruments have been first recorded.—BLAIR STATE BANK v. STEWART, Neb., 77 N. W. Rep. 370.

3. ASSOCIATIONS—By-laws—Constitution.—Where the by-laws of an unincorporated society made the executive committee the court of final appeal in controversies between the members or in and between branches, courts will not assume jurisdiction of such controversies, no effort being made to have them determined within the society.—HERMAN v. PLUMMER, Wash., 55 Pac. Rep. 315.

4. BANKS — Check — Transfer of Deposit.—A check upon a bank by a depositor operates a transfer of its amount to the payee if on deposit at the time of presentation, and the payee or holder may, on refusal of payment, maintain a suit on the instrument for the recovery of its stated sum.—COLUMBIA NAT. BANK v. GERMAN NAT. BANK, Neb., 77 N. W. Rep. 346.

5. BANKS—Officers — Bond of Bank Clerk.—Where a bank clerk had as such embezzled large sums of money before executing bond, and the directors, who knew, or might have known, that fact, represented to the surety that he was trustworthy, the surety is discharged.—DEPOSIT BANK OF MIDWAY'S ASSIGNEE v. HEARNE, Ky., 48 S. W. Rep. 160.

6. BANKS—Receivers — Collateral Attack.—When a court of competent jurisdiction has appointed a receiver in an action where such appointment is authorized, the authority of such receiver is not open to collateral attack.—ANDREWS v. STEELE CITY BANK, Neb., 77 N. W. Rep. 342.

7. BILLS AND NOTES — Consideration.—A non-negotiable note given to the payee thereof as a gratuity, being nothing more than a promise by the payor to make a gift in the future of the sum of money therein mentioned, is without consideration, and cannot, except under special circumstances, be enforced by action.—RICKETTS v. SCOTHORN, Neb., 77 N. W. Rep. 365.

8. BILLS AND NOTES — Consideration.—Where a policy was to be invalid unless the premium was paid in cash, a note given to the agent on condition of his advancing the premium is without consideration, where he fails to do so until after suit brought on the note.—SALDUMBEHERE v. HADLOCK, Tex., 48 S. W. Rep. 197.

9. BILLS AND NOTES—Execution of Note.—When one not a payee signs his name in blank upon the back of a promissory note before the delivery thereof, the law presumes he signs as maker; but as between the original parties and those not innocent purchasers of the paper for value, and without notice, the true character of the obligation assumed, as that he signed as accommodation indorser or guarantor, may be shown *aliunde* and by parol.—DREXEL v. PUSEY, Neb., 77 N. W. Rep. 351.

10. BILLS AND NOTES—Gaming Consideration — Bona Fide Holders.—Rev. St. § 1001, providing that all notes made or entered into in whole or in part for a gambling consideration, or for money won at cards, "shall be utterly void, and of no effect," permits the maker of such a note to defeat it in whose hands soever it may come.—SWINNEY v. EDWARDS, Wyo., 55 Pac. Rep. 306.

11. BILLS AND NOTES—Security—Release of Indorser.—When the assignee of a note is not named as beneficiary in a deed of trust given by the maker to secure it, and is not shown to have accepted its terms and benefits, the indorser is not released from liability by a failure of the assignee to enforce such deed of trust.—TARVER v. EVANSVILLE FURNITURE CO., Tex., 48 S. W. Rep. 199.

12. BILL OF EXCEPTIONS — Disallowance — Establishment.—Where a bill of exceptions disallowed by the presiding judge contains several distinct and independent exceptions, clearly and separately established, the truth of one or more of them may be established on a petition to establish the truth of all the exceptions, though the others are not proved as alleged, or are waived by exceptant.—CLEMONS ELEC. MFG. CO. v. WALTON, Mass., 52 N. E. Rep. 132.

13. BOUNDARIES — Estoppel to Dispute.—The purchaser of part of a tract of land built a fence on a line pointed out to him by the vendor as the boundary, and, when the vendor told the purchaser of the remainder of the track that such fence was the line fence, he acquiesced; and the second purchaser paid him for one-half of it, and it was thereafter, for 16 years, jointly kept up by the first grantee and the second grantee and his successors as the line fence. Held, that the first grantee was equitably estopped from denying that such fence was the true line.—MYNATT v. SMART, Tenn., 48 S. W. Rep. 270.

14. CARRIERS — Passengers — Negligence.—A passenger on a railroad, while standing in the door of the car, the train having stopped at a station, was thrown off his balance by a sudden backward and then forward jerk of the car, and grasped the door casing for support, when the door slammed upon his fingers. Held, that whether the injury was caused by the company's negligence was for the jury.—MCCURRIE v. SOUTHERN PAC. CO., Cal., 55 Pac. Rep. 324.

15. CONSTITUTIONAL LAW — Refunding Municipal Bonds.—Bonds issued by the board of commissioners of a county of Kansas, which, under the constitution and laws of that State, is the only body which can exercise the powers of, or make a contract for, the county as a body politic or corporate, although they may be issued upon a petition of the taxpayers or on a vote of the electors of the county, are contracts of the county only, and not of the petitioners, taxpayers, or voters, who are not bound by the obligation thereof; hence a change in the terms of such contracts by the issuance of refunding bonds, under proper legislative authority, does not impair the obligation of any contract made by the electors or taxpayers.—BOARD OF COMRS. OF PRATT COUNTY, KAN., v. SOCIETY FOR SAVINGS, U. S. C. C. of App., Eighth Circuit, 90 Fed. Rep. 283.

16. CONSTITUTIONAL LAW — Right of Trial by Jury.—The right of trial by jury is a substantial right, which is not to be repealed or denied as to offenses which had been committed at the date that the law was adopted. The provision in the constitution of 1898, providing for the trial of criminal cases, not necessarily punishable at hard labor, by the court without a jury, is *ex post facto* in its application to offenses committed before the constitution was adopted.—STATE v. BAKER, La., 24 South. Rep. 240.

17. CONTEMPT—Procedure—Indictment.—A document purporting to be an indictment, presentment, or report of the grand jury, and stating facts constituting an alleged contempt, signed by the prosecuting attorney, but not sworn to by him nor by any person, nor based on an affidavit, and not "indorsed by the foreman of the grand jury 'A true bill,'" as required by Rev. St. 1894, § 1738 (Horner's Rev. St. 1897, § 1669), does not comply with section 1024 (1012), providing that a rule for an attachment for an indirect contempt shall not issue until the facts alleged therein to constitute such contempt shall have been brought to the knowledge of the court by an information duly verified by the oath or affirmation of some officers of the court or other responsible person.—SAUNDERSON v. STATE, Ind., 52 N. E. Rep. 151.

18. CONTRACT — Assignment — Validity.—A contract imposing, on a party having an interest in the profits of land purchased by another for speculation, a duty to pay the taxes and make sales, declared in the closing sentence "that the stipulations aforesaid are to bind the heirs, executors, administrators, and assigns of the respective parties." Held, that the contract was assignable.—ALDEN v. GEO. W. FRANK IMP. CO., Neb., 77 N. W. Rep. 369.

19. CONTRACT—Construction.—When the contract for the purchase of logs by the mill owner stipulates for delivery by the vendor in the defendants' boom; that the mill owner will saw the logs in a reasonable time, and pay for them according to the mill scale,—the rights of the "logger" or vendor will be adjusted by the number of logs delivered in the boom, and not by the logs claimed to have been sawed, when that sawing is delayed by the mill owner, and the logs are not sawed for months.—ROWE v. CHICAGO LUMBER & COAL CO., La., 24 South. Rep. 235.

20. CONTRACTS — Payment in Corporate Stock.—Defendant land company purchased land from plaintiff, and paid for it in part with corporate stock. Plaintiff claimed that defendant's president, who negotiated the purchase, agreed to take back the stock at par, whenever plaintiff desired. Defendant had no knowledge of any such agreement, and plaintiff, in a number of letters afterwards written to defendant, made no mention of it, but tried to secure a loan on the stock, and offered to sell it for less than par. Held insufficient to show such agreement.—OLDS v. PHILLIPSBURG LAND CO., Tenn., 48 S. W. Rep. 285.

21. CORPORATIONS—Assuming Debts of Incorporator.—A merchant, heavily in debt, organized a corporation, transferring all of his property (his realty by warranty deed, though it was incumbered, and his personalty by bill of sale without reservation) to the company, and taking practically all of the stock, whose par value about equaled the value of the property. The by-laws conferred complete control of the company on him. There was no express agreement that

the company should assume his debt, though he and one of the directors so "understood" it, but he used the company's money to pay some of them, and pledged its credit to secure others. Held, that the company did not assume his debts.—DURLACHER v. FRAZER, Wyo., 55 Pac. Rep. 306.

22. CORPORATIONS — Authority of President. — The president of a corporation, even though he be the business manager, cannot, without a just consideration moving to the corporation, create an indebtedness against it by undertaking to assume for it liability for an individual debt of his own.—BARNHARDT v. STAR MILLS, N. Car., 31 S. E. Rep. 719.

23. CORPORATIONS—Foreign Corporations—Conditions Imposed by State.—A State may, through judicial proceedings, take possession of the assets of an insolvent foreign corporation within its limits, and distribute them or their proceeds among creditors, according to their respective rights; but it cannot, under the constitution of the United States, deny the right of citizens of other States to participate in such distribution on equal terms with its own citizens.—BLAKE v. MCCLUNG, U. S. S. C., 19 S. C. Rep. 165.

24. CORPORATIONS—Liability of Stockholders—Contribution.—A voluntary assumption of the debt of a corporation, or a voluntary payment of its debt, or the two in combination, will not alone confer on a stockholder of the corporation the right to contribution from the other members.—GORDER v. CONNOR, Neb., 77 N. W. Rep. 383.

25. CORPORATIONS—Partnership.—Where a partnership is incorporated, and the firm property transferred to the corporation in good faith, the firm creditors have no lien on the property in the possession of the corporation, the partners being solvent.—BRISTOL BANK & TRUST CO. v. JONESBORO BANKING & TRUST CO., Tenn., 48 S. W. Rep. 228.

26. CORPORATIONS—Priority of Liens.—Code N. C. § 1255, which provides that a mortgage on the property of a corporation shall not exempt such property from execution on a judgment against the corporation for certain specified torts, being in derogation of the common law, must be strictly construed, and cannot be extended to render the property of a railroad company, as against its mortgagee, liable for a judgment against its lessee alone for such a tort committed in the operation of the road, upon which judgment no execution could issue against the lessor.—FIDELITY INSURANCE, TRUST & SAFE DEPOSIT CO. v. NORFOLK & W. R. CO., U. S. C. C., W. D. (N. Car.), 90 Fed. Rep. 175.

27. CORPORATIONS—Stockholders—Wages of Servants.—The superintendent of a mine is not included in the class of "laborers, servants, clerks and operatives of the company," within a provision of the charter making the stockholders individually liable for the wages of such persons, in case the company becomes insolvent.—COCKING v. WARD, Tenn., 48 S. W. Rep. 287.

28. CREDITORS' BILL — Judgment.—When the legal estates of a judgment debtor have been exhausted, a petition in the nature of a creditors' bill will lie in order to subject to payment of the judgment land in which his estate is equitable only, and which could not be reached on execution, or, if reached, could not be sold to advantage because of the clouded condition of the title.—MILLARD v. PARSELL, Neb., 77 N. W. Rep. 390.

29. CRIMINAL LAW—Accomplices—Bribery.—On a trial for bribing a State's witness to disobey a subpœna, where such witness' sister testified that accused had given her money to pay such witness for leaving the county, a refusal to instruct on accomplice testimony was error.—HUMPHRIES v. STATE, Tex., 48 S. W. Rep. 184.

30. CRIMINAL LAW—Assault and Battery—Self-defense.—Where, on a trial for assault, there was evidence justifying a charge as to self-defense, a charge conveying the idea that one assaulted cannot defend himself unless it reasonably appears that his life is in danger, or that he is likely to suffer great bodily harm, is erroneous, since one assaulted may repel force with force.—STATE v. GOERING, Iowa, 77 N. W. Rep. 327.

31. CRIMINAL LAW — Homicide — Alibi.—Where the court charged that if the jury entertain a reasonable doubt as to whether defendant was present when and where the deceased was killed they should acquit, defendant cannot complain that it failed to charge on *alibi*.—PINK v. STATE, Tex., 48 S. W. Rep. 171.

32. CRIMINAL LAW—Insolvent Bank—Knowingly Receiving Deposits.—In a prosecution against an officer of a bank for knowingly accepting and receiving deposits when the bank is insolvent, the receipt of separate deposits from different depositors may be charged in separate counts in one information; and a trial and conviction may be had and sentences imposed on such counts as the proof warrants, although each of the counts charges a separate and distinct felony.—STATE v. WARNER, Kan., 55 Pac. Rep. 342.

33. CRIMINAL LAW—Manslaughter—Adequate Cause.—Pen. Code 1895, art. 698, defines manslaughter as voluntary homicide committed under the immediate influence of sudden passion, arising from "an adequate cause," but neither justified nor excused by law. Article 700 defines "adequate cause" as that which would commonly produce a degree of anger in a person of "ordinary temper," sufficient to render the mind incapable of cool reflection. Held, that it is error to use the phrase "ordinary temper and courage," instead of "ordinary temper," in an instruction on adequate cause.—GARDNER v. STATE, Tex., 48 S. W. Rep. 170.

34. CRIMINAL LAW—New Trial—Misconduct of Bailiff.—In the absence of proof, it will not be presumed that a juror to whom a bailiff in charge of the jury made an improper remark communicated it to the other jurors, or that it influenced the jury in rendering their verdict.—MESSENGER v. STATE, Ind., 52 N. E. Rep. 147.

35. CRIMINAL LAW—Principal and Accessory.—On an information charging one, as principal, with having committed a felony, the prisoner cannot be convicted as an accessory.—OERTER v. STATE, Neb., 77 N. W. Rep. 367.

36. CRIMINAL LAW—Seduction—Offer of Marriage.—Prosecutrix testified that defendant seduced her under a promise of immediate marriage if anything happened to her, but, if not, he would marry her "some time after Christmas." She testified to sexual intercourse with him on three other occasions, the first of which was more than a year before, at each of which times she said he had made a general promise to marry her. Held not to constitute seduction.—SPENRATH v. STATE, Tex., 48 S. W. Rep. 192.

37. CRIMINAL LAW—State's Evidence.—The prosecuting attorney agreed not to prosecute defendant, on his promise to testify against his co-defendants. He gave such testimony on a *habeas corpus* trial, and before the grand jury, but refused to testify when the cases were called for trial. Held, that he was not exempt from prosecution, as he had violated his agreement.—NICKS v. STATE, Tex., 48 S. W. Rep. 186.

38. CRIMINAL PRACTICE—Embezzlement—Indictment.—An indictment for embezzlement is not defective as failing to allege, in the words of the statute, that the property came into accused's possession, or under his care, by virtue of his agency, office or employment the relation of the parties being sufficiently stated.—EVANS v. STATE, Tex., 48 S. W. Rep. 194.

39. CRIMINAL PRACTICE—Larceny—Value of Animals.—In a prosecution for stealing a thoroughbred Cotswold ram, kept for breeding purposes, questions as to the "value of that kind of a ram" at the place and time of the alleged theft, and as to the "value of full-blooded Cotswold rams," are not objectionable in form, as calling for his value as mutton.—STATE v. MCKEAVITT Iowa, 77 N. W. Rep. 325.

40. CRIMINAL PRACTICE — Rape—Indictment.—Under Ky. St. § 1152, prescribing the punishment for the crime of rape upon the body of an infant under 12 years of age, and section 1155, prescribing a different punish-

ment for the offense of carnally knowing a female under the age of 12 years, an indictment for rape which charges that defendant committed the offense upon the body of an infant under the age of 12 years, by unlawfully and feloniously having carnal knowledge of her body, is good, and charges but a single offense.—BLANKS v. COMMONWEALTH, Ky., 48 S. W. Rep. 151.

41. CRIMINAL PRACTICE—Seduction—Indictment.—An indictment for seduction, under Code, § 4762, is not defective in referring to prosecutrix as a "person" of previously chaste character, instead of a "woman" of previously chaste character.—STATE v. OLSON, Iowa, 77 N. W. Rep. 332.

42. CRIMINAL TRIAL—Exclusion of Witnesses.—Under a rule excluding witnesses from the court room while others are testifying, the court properly, within its sound discretion, permitted the clerk of the court to testify, where he was necessarily present for want of a deputy.—JOHNICAN v. STATE, Tex., 48 S. W. Rep. 181.

43. CRIMINAL TRIAL—Failure of Accused to Testify.—Under Code, § 5484, forbidding the State's attorney to "refer" to accused's failure to testify, it was error to say: "That accused man ought to be honest to society, and if we have made a chain, and put it around you, and fasten it, and all you have to do is to reach in your pocket and get an instrument and snap it asunder, you ought to do it."—STATE v. TRAUGER, Iowa, 77 N. W. Rep. 336.

44. CRIMINAL TRIAL—Remarks of Counsel.—A prosecutor's statement to the jury that a co-defendant had been convicted of a similar offense, and was then imprisoned in the penitentiary, is not such prejudicial error as to be irreparable by the court rebuking the prosecutor, and admonishing the jury that the remarks were improper, and were not to be considered.—DUDLEY v. STATE, Tex., 48 S. W. Rep. 179.

45. DAMAGES — Wrongful Levy — Mental Anguish.—Mental anguish is no element of recovery of compensatory damages for a wrongful seizure and levy on chattels.—CHAPPELL v. ELLIS, N. Car., 31 S. E. Rep. 709.

46. DEEDS—Consideration—Exchange of Property.—Two persons agreed to exchange their houses and lots, each to assume certain incumbrances. Deeds were executed by each of the parties to the agreement, respectively, to the wife of the other party, expressly subject to the incumbrances named, and contained covenants of seisin and against other incumbrances. The expressed consideration of each was one dollar, the exchange of property and the assumption of named incumbrances. Held, that each of the properties conveyed was a consideration for the conveyance of the other.—HARVEY v. GALLAHER, Tenn., 48 S. W. Rep. 298.

47. DESCENT AND DISTRIBUTION—Bastards.—Acts 1819, ch. 13, and Act 1851-52, ch. 39, as jointly embodied in Mill. & V. Code, § 3273 (Shannon's Code, § 4166), provides that where an illegitimate child dies intestate, without children, husband or wife, his estate shall go to his mother, and, if there be no mother living, then equally to his brothers and sisters by his mother, "or descendants of such sisters and brothers." Held, that the latter clause includes only legitimate descendants.—GILES v. WILHOIT, Tenn., 48 S. W. Rep. 268.

48. DIVORCE—Cruelty.—Whether the cruelty inflicted by a husband upon his wife because of her disobedience, impropriety or misconduct was so far disproportionate to her offense as to be unjustifiable is a mixed question of law and fact, to be determined in any case from the particular facts and circumstances in evidence therein.—WALTON v. WALTON, Neb., 77 N. W. Rep. 392.

49. EJECTMENT—Evidence.—A plaintiff in ejectment cannot rely on a defect in the title of his adversary, but must recover, if at all, on the strength of his own title or right to the property.—COMSTOCK v. KERWIN, Neb., 77 N. W. Rep. 387.

50. EQUITY—Discovery—Powers of Federal Court.—The power of a federal court of equity to entertain a cross bill for discovery in a suit in equity has not been abridged by any act of congress or rule of the supreme court, and is not superseded by statutory methods provided for obtaining facts in actions at law.—INDIANAPOLIS GAS CO. v. CITY OF INDIANAPOLIS, U. S. C. C., D. (Ind.), 90 Fed. Rep. 196.

51. EXECUTION SALE.—Property once dedicated to public use is *extra commercia*, and inalienable by seizure and sale under execution against a municipal corporation, unless it is made affirmatively and clearly to appear that its use had been abandoned or lost by nonuser.—CITY OF NEW ORLEANS v. WERLEIN, La., 24 South. Rep. 232.

52. EXTRADITION—Claim of Agent against State.—Under Ky. St. § 1934, providing that the agent of the State, under a requisition, shall receive mileage for the distance he may travel to and from the jail of the county designated in the proclamation to the place where the fugitive may be arrested, the agent is not entitled to mileage for the distance traveled in order to obtain the requisition, or in order to obtain the warrant of the governor of the State in which the fugitive is arrested.—WILSON v. BRADLEY, Ky., 48 S. W. Rep. 166.

53. FEDERAL COURTS — Jurisdiction—Citizenship of Parties.—Under the judiciary act of 1888, a circuit court of the United States cannot entertain a personal action by joint plaintiffs who are citizens of different States against a defendant who is not an inhabitant of the district where the action is brought, but such provision does not affect the jurisdiction of the court in local actions to enforce a lien or claim upon real estate or personal property within the district.—LANCASTER v. ASHEVILLE ST. RY. CO., U. S. C. C., W. D. (N. Car.), 90 Fed. Rep. 129.

54. FRAUDULENT CONVEYANCES—Evidence.—A mortgage to a bank, in which the mortgagors had subscribed an affidavit that it was made in good faith, will not be held fraudulent on the mere testimony of the mortgagors that they made it, not as security for their debts to the bank, but for the purpose of delaying their creditors, and the fact that the mortgagee advertised the property for sale, and at the time of taking the mortgage had sufficient collateral security, and that the property mortgaged with the other security was largely in excess of the debt.—STRAW-ELLSWORTH MFG. CO. v. CAIN, Wash., 55 Pac. Rep. 321.

55. FRAUDULENT CONVEYANCES—Husband and Wife.—A voluntary conveyance made with intent to defraud antecedent creditors is void as to subsequent creditors also.—CARPENTER v. SCALES, Tenn., 48 S. W. Rep. 249.

56. HIGHWAYS — Bridges — Negligence. — A public bridge is a highway, and those traveling upon it as a part of a public road or street have a right to presume, in the absence of notice or knowledge to the contrary, that such bridge is clear of unguarded obstructions and dangers.—MAHNKEN v. BOARD OF CHOSEN FREEHOLDERS OF MONMOUTH COUNTY, N. J., 49 Atl. Rep. 921.

57. HIGHWAYS—Title—Prescription.—The fact that the general public passed over private land for more than 10 years does not establish a title in the public by prescription, it having a right of way in a road which was rougher, but more direct; and this, though the supervisors had appointed an overseer for the road at that point, they not being shown to know that the original road had been departed from, and a road beaten over private land.—BOARD OF SUPRS. OF WARREN COUNTY v. MASTRONARDI, Miss., 24 South. Rep. 199.

58. HOMESTEAD—Declaration.—To entitle one to the benefit of a homestead, the provisions of the statute as to filing and declaration of homestead must be strictly complied with.—BURBANK v. KIRBY, Idaho, 55 Pac. Rep. 295.

59. HOMESTEAD—Forfeiture.—Homestead rights cannot be devested by the act of the husband alone. Therefore the wife's right of homestead is not defeated where she remains in occupancy, and the husband abandons her, and lives elsewhere.—MORRILL v. SKINNER, Neb., 77 N. W. Rep. 375

60. HUSBAND AND WIFE—Actions—Process.—Where a married women is sued jointly with her husband, and served with process, but he is not served, if she fails to appear and plead her coverture as a defense, the judgment against her is valid, and may be satisfied by execution against her general estate.—CARTER v. KAISER, Tenn., 48 S. W. Rep. 265.

61. HUSBAND AND WIFE—Fraudulent Conveyances.—Where a conveyance from a husband to a wife is not made to hinder or defraud subsequent creditors, it will not be set aside in favor of such a creditor, although made without adequate consideration.—KING v. WELLS, Iowa, 77 N. W. Rep. 338.

62. INJUNCTIONS - Covenants in Deed.—A preliminary injunction will not be granted to a grantor to restrain the violation of a covenant in a deed against doing business on the premises on Sunday, where it has been openly violated for several years by defendant grantee and by other grantees of the same grantor including his tenants, under a like covenant, and where defendant has expended large sums in improving his property in reliance on the grantor's apparent abandonment of the restrictions.—OCEAN CITY ASSN. v. SCHURCH, N. J., 41 Atl. Rep. 914.

63. INJUNCTION—Enforcement of Bond — Rights of Sureties.—The court which grants an injunction, and takes an injunction bond to save the defendant from loss caused thereby, may, in an ancillary proceeding, summarily enforce such bond against the sureties; but in such proceeding, at least when the amount of recovery is uncertain, the sureties must have notice and their day in court before the amount of damages is fixed against them.—LESLIE v. BROWN, U. S. C. C. of App., Sixth Circuit, 90 Fed. Rep. 171.

64. INSURANCE—Powers of Agent to Bind Company.—A limitation upon the authority of a general agent of an insurance company, having power to make contracts of insurance for the company, will not relieve it from liability on a policy issued by such agent, although in violation of such limitation, where the insured had neither actual nor constructive notice of the limitation.—TEUTONIA INS. CO. v. EWING, U. S. C. C. of App., Sixth Circuit, 90 Fed. Rep. 217.

65. INTERVENTION—Parties.—A person claiming ownership of property in litigation may, at any time before trial, become a party to the action by intervention, and have his claim adjudicated.—MCCONNIFF v. VAN DUSEN, Neb., 77 N. W. Rep. 348.

66. INTOXICATING LIQUOR—License — Election.—Under Code 1892, ch. 37, providing for an election, on petition to the supervisors, to determine whether liquors should be sold, the election is void where the supervisors' record fails to show affirmatively that the petitioners comprised one-third of the qualified electors.—LESTER v. MILLER, Miss., 24 South. Rep. 193.

67. INTOXICATING LIQUORS — License — Notice of Application.—Where the matter published in each of two editions of a daily paper is not substantially the same, and each edition has a different heading or name, and is sent to a different list of subscribers, notice of an application for liquor license is required to be inserted in but one edition thereof daily for the requisite length of time; and its circulation alone is to be considered in determining whether the proper newspaper was selected.—FEIL v. KITCHEN BROS. HOTEL CO., Neb., 77 N. W. Rep. 344.

68. JUDGMENT BY MISTAKE — Setting Aside.—Code, § 274, authorizing the setting aside of a judgment taken against a party through his "mistake, inadvertence, surprise, or excusable neglect," does not authorize the setting aside of a judgment against a corporation, because, acting on its attorney's advice, it verified its answer by an agent, and not by an officer, as required by section 258, that being a mistake of law.—PHIFER v. TRAVELERS' INS. CO. OF HARTFORD, CONN., N. Car., 31 S. E. Rep. 715.

69. JUDICIAL SALES—Rents and Profits.—A purchaser of lands at judicial sale is not entitled to rents and profits until his right of possession attaches on confirmation of sale.—HYDER v. O'BRIEN, Tenn., 48 S. W. Rep. 262.

70. LANDLORD AND TENANT — Rent — Lien.—Under 2 Gen. St. 1897, ch. 121, § 26, providing that any rent due for farming land shall be a lien on the crop growing or made on the premises, a landlord has a lien for his rent on crops grown on the leased premises by a sublessee of his tenant.—BERRY v. BERRY, Kan., 55 Pac. Rep. 348.

71. LICENSE—Revocation.—An oral license to use a roadway over the land of another is irrevocable after the licensee has performed labor on the faith thereof.—NOBLE v. SHERMAN, Ind., 52 N. E. Rep. 150.

72. MASTER AND SERVANT — Injuries to Employee.—A person or corporation using the cars or appliances of another person or corporation, as to its employees, uses such cars or appliances charged with the same duty as to inspection as if they were his or its own.—UNION STOCK-YARDS CO. v. GOODWIN, Neb., 77 N. W. Rep. 357.

73. MASTER AND SERVANT — Injury to Employee—Burden of Proof.—In a suit brought to recover for the death of a coal miner, who is killed in an explosion in a coal mine, where the plaintiff claims that the explosion was caused by an air course being partially obstructed by accumulation of water, so that sufficient air was not passing through it to properly ventilate the mine, the burden of proof is on the plaintiff to show that such air course was so obstructed that sufficient air was not passing through it.—DESERANT v. CERRILLOS COAL R. CO., N. Mex., 55 Pac. Rep. 290.

74. MECHANICS' LIEN—Continuous Contracts—Notice.—Defendants furnished labor and material as directed by the owner of a building for the purpose of making it into an opera house. There were no plans and specifications to work by, and no agreement as to price or time of payment, or as to the amount of work to be done, or when it was to be completed, and at no time had there been any settlement of the amount due to defendants. Held, that a notice of a mechanic's lien filed within the statutory time from the last item included all the items, though prior to such time the work had been interrupted, and parts of it had been completed.—PATTON v. MATTER, Ind., 52 N. E. Rep. 173.

75. MINES AND MINERALS—Construction of Oil Lease.—An oil and gas lease provided that the lessee should pay as rental a share of all oil produced, and a stipulated sum for each gas well the product of which was utilized. Its term was 10 years, and as much longer as oil or gas was produced in paying quantities. It bound the lessee to complete one well in a district named within one year, or pay a fixed sum per annum thereafter until such well should be completed. The lessee completed a well within the year, which was unproductive, and then ceased further operations. Held, that the lease necessarily contemplated, as the sole consideration to the lessor, the development of the leased property, and that by ceasing efforts to that end for a number of years the lessee abandoned the lease, and lost all rights thereunder.—FOSTER v. ELK FORK OIL & GAS CO., U. S. C. C. of App., Fourth Circuit, 90 Fed. Rep. 178.

76. MINES AND MINERALS — Possession of Surface.—The possession of the surface of land does not carry with it the possession of the minerals beneath, so as to confer title thereto under the statute of limitations, where the estate in the minerals has been severed from that in the surface.—CATLIN COAL CO. v. LLOYD, Ill., 52 N. E. Rep. 144.

77. MORTGAGES—Merger of Equitable in Legal Title.—When a mortgage was given to secure two notes, and the holder of one of them, with knowledge of the existence of the other, surrenders his note to the maker in consideration of a conveyance of the mortgaged land in fee, the equitable lien is not merged in the legal title, but the holder is entitled to share *pro rata* with the holder of the other note on a foreclosure of the latter.—STEWART v. EATON, Wash., 55 Pac. Rep. 314.

78. MORTGAGE BY WIFE — Acknowledgment.—An acknowledgment of a mortgage by a married woman, stating that it was executed freely, voluntarily, and understandingly and "without fear or compulsion from any person," instead of "without constraint from her husband, and for the purposes therein expressed," as required by statute, is fatally defective.—COX v. RAILWAY BLDG. & LOAN ASSN., Tenn., 48 S. W. Rep. 226.

79. MUNICIPAL BONDS — Estoppel by Recitals.—A municipal corporation cannot make a false certificate on the face of its negotiable bonds, or a false record that they are issued in accordance with the law for a lawful purpose, and then defeat a recovery upon them by an innocent purchaser, who has bought in reliance upon the certificate of record, by proof that they were in fact issued for an unlawful purpose.—BOARD OF COMRS. OF HASKELL COUNTY, KAN., v. NATIONAL LIFE INS. CO. OF MONTPELIER, VT., U. S. C. C. of App., Eighth Circuit, 90 Fed. Rep. 229.

80. MUNICIPAL CORPORATION — Bonds — Estoppel by Recitals.—Under the constitution and statutes of Kansas, which vest the board of commissioners of a county with the power to settle and allow claims against it, a recital in bonds issued by a county that they were issued by the county board in accordance with the provisions of a statute authorizing counties to refund their indebtedness is a representation that the debt refunded was just and valid; and, as against an innocent purchaser of such bonds in reliance upon this representation, the county is estopped from denying it for the purpose of defeating their collection.—BOARD OF COMRS. OF SEWARD COUNTY, KAN., v. ÆTNA LIFE INS. CO., U. S. C. C. of App., Eighth Circuit, 90 Fed. Rep. 222.

81. MUNICIPAL CORPORATIONS — Combination to Prevent Competitive Bidding.—Under Ky. St. § 3450, part of charter of cities of third class, providing that the mayor shall advertise the letting of contracts for street improvements "in some newspaper published in said city, for at least ten days," insertion of notice in a newspaper for one time ten days before the letting is sufficient. An agreement between competitors in business that one of them shall make a bid for both, the work to be divided between them, is not a fraudulent combination to prevent competitive bidding which will render void a contract awarded to such bidder.—WOODWARD v. COLLETT, Ky., 48 S. W. Rep. 164.

82. MUNICIPAL CORPORATION — Contracts — Ratification.—Where a municipal corporation receives and retains substantial benefits under a contract which it was authorized to make, but which was void because irregularly executed, it is liable in an action brought to recover the reasonable value of the benefits received.—LINCOLN LAND CO. v. VILLAGE OF GRANT, Neb., 77 N. W. Rep. 349.

83. MUNICIPAL CORPORATIONS—Delinquent Payments for Water.—Where a city agrees with a water company to pay, in monthly installments, out of its current revenues for the year, for water furnished, to entitle such company to interest on delinquent installments before the end of the current year it should allege that there were sufficient current revenues to pay such installments when due.—WATERWORKS CO. v. CITY OF SAN ANTONIO, Tex., 48 S. W. Rep. 205.

84. MUNICIPAL CORPORATIONS — Ordinances—Injunction.—A taxpayer has a right of action to restrain a city from holding an election in a new ward, claimed to have been illegally created, and from expending the public revenues in defraying the expenses thereof.—CASCADEN v. CITY OF WATERLOO, Iowa, 77 N. W. Rep. 332.

85. NATIONAL BANK—Intent to Defraud.—An intent to injure or defraud a national bank within the meaning of section 5209 of the Revised Statutes of the United States does not necessarily involve malice or ill-will toward the bank. The law presumes that every sane person, who has attained the age of discretion, contemplates and intends the necessary or natural consequences of his own acts; and it is sufficient that the unlawful intent is such as, if carried into execution, will necessarily or naturally injure or defraud the bank.—UNITED STATES v. KENNEY, U. S. C. C., D. (Del.), 90 Fed. Rep. 257.

86. NUISANCE—Obstruction of Highway.—When the authorities of a municipal corporation, invested by the legislature with authority so to do, construct an improvement in a public street, such improvement is not a nuisance, though it damage adjacent property, and interfere with the owner's enjoyment thereof, and be negligently constructed.—CITY OF OMAHA v. FLOOD, Neb., 77 N. W. Rep. 379.

87. PARENT AND CHILD—Custody of Child.—The statute and the demands of nature commit the custody of young children to their parents, rather than to strangers; and the court may not deprive the parent of such custody, unless it be shown that such parent is unfit to perform the duties imposed by the relation, or has forfeited the right.—NORVAL v. ZINSMASTER, Neb., 77 N. W. Rep. 373.

88. PARTNERSHIP—Accounting.—A partner contributing second-hand machinery that he had purchased at a master's sale cannot complain of an order on a partnership accounting allowing him what he was prepared to bid for the machinery at such sale.—FRIERSON v. MORROW, Tenn., 48 S. W. Rep. 245.

89. PLEADING — Complaint — Assignment.—A complaint averring that a contractor had assigned to plaintiff warrants (and all rights thereunder) issued in payment of work done under the contract is insufficient to state a cause of action as assignee or successor in interest under the contract.—SEATTLE NAT. BANK v. SCHOOL DIST. NO. 40, Wash., 55 Pac. Rep. 317.

90. PLEADING — Statute of Limitations.—When the statute of limitations of a foreign State is set up as a defense, it is error for the court, on motion, without a trial, to render a judgment of dismissal, for the reason that the plaintiff, under the provisions of said section 4217, Rev. St., is deemed to have controverted the new matter thus set as a defense, and the defendant is put on his proof. The plaintiff may deny the existence of such statute of limitations as pleaded, or may confess and avoid it in any manner the law permits.—ALSPAUGH v. REID, Idaho, 55 Pac. Rep. 300.

91. PRINCIPAL AND AGENT—Remedies of Principal.—Where a part owner of a machine, having authority to dispose of the property, sold it for a note, and thereafter purchased the machine for himself from the makers of the note, surrendering the note to them, they were not liable to the co-owner for his interest, his remedy being against the selling owner.—CLINE v. STRADLEE, Tenn., 48 S. W. Rep. 272.

92. RAILROAD COMPANY—Abandonment of Track.—Under Rev. St. Ohio, § 3272, providing that a railroad company shall make no change in its road or terminal which will involve the abandonment of the road, either partly or completely constructed, where a company, under its resolution for building a branch line, had a discretion as to the place where it should fix the terminus, and, after building its track to certain mines, established the terminal station a mile or so from the end of such track, that part of the track beyond the station is not a part of its line of road to which the statute applies, but is simply a spur or switch track.—MERCANTILE TRUST CO. v. COLUMBUS, S. & H. R. CO., U. S. C. C., S. D. (Ohio), 90 Fed. Rep. 148.

93. RAILROAD COMPANY—Consolidation or Merger.—A provision in a charter authorizing a railroad company to consolidate with other railroad companies "on such terms as they may agree on" must be construed as meaning such terms as are consistent with the law as announced in their charters and otherwise.—ADAMS v. YAZOO & M. V. R. CO., Miss., 24 South. Rep. 200.

94. RAILROAD COMPANY—Foreclosure Suits.—Upon a petition of intervention, in a suit to foreclose a railroad mortgage, by one claiming a prior vendor's lien on a portion of the right of way of the road, the court

may, if it sustains the claim for a lien, in order to prevent a dismemberment of the road by a sale of such portion, order the amount found due the claimant paid by the receiver from the earnings of the road, or, if necessary, from the proceeds of the entire road when sold, or, as a last resort, it may decree the separate sale of the portion covered by the lien.—WHEELING BRIDGE & TERMINAL RY. CO. v. REYMANN BREWING CO., U. S. C. C. of App., Fourth Circuit, 90 Fed. Rep. 189.

95. RAILROAD COMPANY—Preferred Claims in Insolvency.—A claim against a railroad for car rentals or mileage accruing prior to a receivership is not entitled to payment as a preferential debt.—GRAND TRUNK RY. CO. v. CENTRAL VERMONT R. CO., U. S. C. C., D. (Vt.), 90 Fed. Rep. 168.

96. RAILROAD COMPANY—Street Railroads—Contributory Negligence.—A person who stepped off facing the rear of a street car, which started too quickly, and injured her, is not guilty of contributory negligence, if when she started to take the last step the car was not moving.—MORRISON v. CHARLOTTE ELECTRIC RAILWAY, LIGHT & POWER CO., N. Car., 31 S. E. Rep. 720.

97. RECEIVERS—Set-off.—Where a receiver of an estate pending litigation over real property collected rent thereon from the occupant, who was by the final decree adjudged to be the owner of one-half the property, the rent collected upon such half did not become a part of the estate, but remained the property of the real owner; and he may set-off the same against a claim for rent subsequently due from him to the receiver upon the other half of the property.—GRANT v. BUCKNER, U. S. S. C., 10 S. C. Rep. 163.

98. RECEIVERS—Taxes—Sales.—Under Horner's Rev. St. 1897, § 6436, providing that where a receiver neglects to pay taxes on property he may be cited to show cause why such taxes, with penalty, should not be paid, it was a "good and sufficient cause" that the receiver had sold the property, which was realty, by the court's order and approval, and that the purchaser had taken it subject to taxes.—STETSON v. ROCHESTER SHOE CO., Ind., 52 N. E. Rep. 149.

99. SALES—Retention of Title.—A wholesaler at various times shipped goods to a retailer, the bills being marked, "Consigned; our property until paid for." He knew that the latter mingled the goods with his regular stock and retailed them to customers. He placed no restrictions on such sales, and required no reports of sales, and no account of sales was kept, but part of the goods were paid for out of the general proceeds. Held, that he retained no title as against an assignee for benefit of creditors.—MAYER v. CATRON, Tenn., 48 S. W. Rep. 255.

100. SHERIFFS—Bonds.—Exemplary damages cannot be recovered on a bond given, by order of court, by one appointed as temporary sheriff, to recompense the sheriff for "all damages and costs" he should sustain by reason of his being suspended from office on the bringing of an action to remove him, in case the causes for removal were found to be untrue or insufficient.—MCMULIN v. ELLIS, Tex., 48 S. W. Rep. 217.

101. STATUTES—Enactment—Evidence.—While legislative journals, as public records, may be looked at for the purpose of ascertaining whether a statute, parts of which they affirmatively show were duly passed, was in reality enacted as a whole, yet, where the evidence of its non-enactment as a whole consists only of inferences, though strong, derivable from silence and omissions of statement from the journal, they cannot be held sufficient to overcome the presumptive evidence of the due enactment of the statute furnished by its enrollment, its attestation by the presiding officers of the two houses, and its approval by the governor.—IN RE TAYLOR, Kan., 55 Pac. Rep. 340.

102. STATUTE OF FRAUDS—Lands—Contracts.—A verbal promise to convey land at a certain time in the future is taken out of the statute of frauds where the donee takes possession and retains it until such time, and makes valuable improvements.—GAINES v. KENDALL, Ill., 52 N. E. Rep. 141.

103. TAXATION—Collection of County Taxes.—Under Ky. St. § 1729, allowing the sheriff, for collecting the county revenue, 10 per cent. on the first $5,000, and 4 per cent. upon the residue, the county taxes cannot be classified according to the different sources from which they are collected, and the sheriff allowed 10 per cent. on the first $5,000 collected of each class.—PENDLETON COUNTY v. MCMILLAN, Ky., 48 S. W. Rep. 154.

104. TAXATION—Erroneous Listing of Property.—The action of the cashier of a national bank in giving in to the officers of the city for taxation against the bank a number of the shares of its stock, taxable under the laws of the State to the stockholders, does not estop a receiver subsequently appointed for the bank, but before the tax is paid, from setting up the mistake.—CITY OF WILMINGTON v. RICAUD, U. S. C. C. of App., Fourth Circuit, 90 Fed. Rep. 214.

105. TRUSTS—Change of Securities.—Where one holding as trustee securities owned by another exchanges them for other securities, without authority from the owner, and without the investment of any funds of his own, the owner has his election either to take the substituted securities received by the trustee, or to recover the value of his own securities which were given in exchange.—WOODRUM v. WASHINGTON NAT. BANK, Kan., 55 Pac. Rep. 333.

106. VENDOR AND PURCHASER—Alienation of Land by Heir.—The sale of land by executory contract is an alienation thereof, within Ky. St. § 2087, which provides that the estate alienated by an heir before suit brought to subject it to the ancestor's debts shall not be liable to the creditors, in the hands of a *bona fide* purchaser, unless action is instituted within six months after the estate is descended.—PARKS v. SMOOT'S ADMRS., Ky., 48 S. W. Rep. 46.

107. VENDOR AND PURCHASER—Assumption of Mortgage.—A vendee assumed a mortgage against the property, but gave his note for the full purchase price, and afterwards filed a bill, and had such note canceled to the amount of the mortgage, and gave his note for the amount to the mortgagee instead. The note recited that it was a purchase-money note. Held, that such note did not create a vendor's lien against the land.—ALLEN v. NEWTON, Tenn., 48 S. W. Rep. 283.

108. WILLS—Charities—Bequests.—Bequests of specified sums were made to "the trustees of" two named churches, to build a parsonage for each of the pastors in charge. There were certain persons in the community known as such "trustees," and they were well known to the testatrix as such. Held, that the bequests were to them as individuals, and not in a body, in trust for the purpose named, and were valid though the trustees were not incorporated.—SHEETS v. HARDIN, Tenn., 48 S. W. Rep. 267.

109. WILLS—Devises—Remainders.—The rule that a devise of a remainder to the children of a life tenant inures to the benefit of the children surviving the life tenant, to the exclusion of the heirs of a deceased child, is not changed by Mill. & V. Code, § 2812, making the use of the word "heirs" unnecessary in conveying a fee, and section 3035, making a will to take effect as though it was executed immediately before testator's death.—NEAL v. HODGES, Tenn., 48 S. W. Rep. 263.

110. WILLS—Rule in Shelley's Case.—Testatrix provided that her estate should be converted into money and divided equally among her children, share and share alike; but directed that her daughters' shares be placed in the hands of her son, as trustee, and that he should hold the same during the life of each one, respectively, and pay each of them the yearly profit during the life of each, and to their individual heirs after the death of each; and appointed her son executor to execute the will as he might deem best. Held, that the devise did not vest in each daughter the absolute title to her portion, and gave her no power of testamentary disposition thereof.—HOOKER v. MONTAGUE, N. Car., 31 S. E. Rep. 705.